

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

Georgia-Pacific, LLC

Defendant.

:
:
:
:
: CIVIL ACTION NO. 1-09-cv-429
:
:
: HON. PAUL L. MALONEY
: Chief United States District Judge
:
:
:

**CONSENT DECREE
FOR THE DESIGN AND IMPLEMENTATION OF CERTAIN RESPONSE ACTIONS
AT OPERABLE UNIT 2 OF THE
ALLIED PAPER, INC./PORTAGE CREEK/KALAMAZOO RIVER SUPERFUND SITE.**

I BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its Complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA for response actions at the Willow Boulevard/A-Site Landfill, Operable Unit 2 ("OU2") of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site ("Site") in Kalamazoo Township, Michigan; and (2) performance of response work at OU2 consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Michigan (the "State") on July 29, 2007, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for OU2, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of the Interior ("DOI") and the National Oceanic and



Atmospheric Administration of the United States Department of Commerce ("NOAA") on July 29, 2007, of negotiations with potentially responsible parties regarding the release of hazardous substances at OU2 that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from OU2 constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990, 55 Fed. Reg. 35502.

G. In response to a release or a substantial threat of a release of hazardous substances at or from OU2, Settling Defendant, or its predecessors in interest, commenced in 1993 a Remedial Investigation and Focused Feasibility Study ("RI/FFS") for OU2 pursuant to an Administrative Order on Consent entered into on December 28, 1990 between the State and certain potentially responsible parties for the Site.

H. In a November 19, 2001 letter authored by the Michigan Department of Environmental Quality ("MDEQ"), the State disapproved the RI/FFS for OU2 and assumed its completion. The State completed the Remedial Investigation and the Focused Feasibility Study Reports for OU2 in November of 2004.

I. In accordance with the Site-Specific Amendment to the Enforcement Agreement for State-Enforcement-Lead Sites in Michigan, signed by the MDEQ on January 9, 2002 and by EPA on February 15, 2002, EPA acquired the enforcement lead for OU2 upon the State's submission of the RI/FFS Reports to EPA on December 2, 2004.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the proposed plan for remedial action on July 26, 2005, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available by request to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at OU2 is embodied in a final Record of Decision ("ROD"), executed on September 27, 2006, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA, EPA believes that the Work, as defined herein, will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

M Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by Settling Defendant shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of OU2 and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to OU2 or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

III. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Date of Lodging” shall mean the day on which this Consent Decree is lodged with the Court. “DOI” shall mean the United States Department of the Interior and any successor departments or agencies of the United States.

“DOJ” shall mean the United States Department of Justice and any successor departments or agencies of the United States.

“Effective Date” shall be the effective date of this Consent Decree as provided in Section XXVI.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“EPA Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA both incurred and paid at or in connection with OU2 through April 30, 2008, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. Such costs do not include any costs incurred by DOJ in connection with OU2.

“Federal Trustees” shall mean DOI, acting through FWS, and NOAA.

“Future Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and DOJ incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VI (Remedy Review), VIII (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), and XIV (Emergency Response), and Paragraph 91 of Section XX (Work Takeover). Future Costs shall also include all Interim Response Costs, and all Interest on those EPA Past Response Costs Settling Defendant has agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from April 30, 2008 to the date of entry of this Consent Decree. Future Costs shall not include costs incurred by DOJ on behalf of the Federal Trustees.

"FWS" shall mean the Fish and Wildlife Service of the United States Department of the Interior and any successor departments or agencies of the United States.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by EPA in connection with OU2 between April 30, 2007 and the Effective Date, or (b) incurred by EPA prior to the Effective Date but paid after that date.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"MAG" shall mean the Michigan Attorney General and any successor departments or agencies of the State.

"MDEQ" shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State.

"MDNR" shall mean the Michigan Department of Natural Resources and any successor departments or agencies of the State.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resource Trustees" or "Trustees" shall mean DOI, acting through FWS; NOAA; and the State, acting through co-trustees MAG, MDNR, and MDEQ.

"NOAA" shall mean the National Oceanic and Atmospheric Administration of the United States Department of Commerce and any successor departments or agencies of the United States.

"Operable Unit 2" or "OU2" shall mean the Willow Boulevard/A-Site Landfill, encompassing approximately 32 acres and consisting of two disposal areas and adjacent impacted areas, including the Willow Boulevard Drainageway; the Area South of the A-Site Berm, including former Olmstead Creek; the Area East of Davis Creek; and the AMW-3A Area. The Willow Boulevard/A-Site Landfill is one of four landfills associated with the Site, and is located southeast of the intersection of Business I-94 and Highway M-96 in Kalamazoo Township, Michigan, and depicted generally on a figure attached as Appendix D.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and Settling Defendant.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 7.2 of the ROD and Section II of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to OU2 of the Site, signed on September 27, 2006, by the Region 5 Regional Administrator's delegate, the Director of Region 5's Superfund Division, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by Settling Defendant to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Work" shall mean the activities, including any Operation and Maintenance associated with the Remedial Action, to be undertaken by Settling Defendant pursuant to this Consent Decree to implement the ROD in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean Georgia-Pacific, LLC.

"Site" shall mean the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site, encompassing approximately 80 miles of the Kalamazoo River (from Morrow Lake Dam to Lake Michigan), including the river banks and formerly impounded adjacent floodplains and wetlands, as well as a 3-mile stretch of Portage Creek and four paper residual disposal areas, located in Kalamazoo and Allegan Counties, Michigan, and depicted generally on the map attached as Appendix D.

"State" shall mean the State of Michigan.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at OU2, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous substance” under Section 20101(1)(t) of Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101(0) *et seq.*

“Work” shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

IV. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare and the environment at OU2 by the design and implementation of response actions at OU2 by Settling Defendant; to reimburse EPA’s response costs for response actions at OU2; and to resolve EPA’s claims against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant.

a. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree.

b. Settling Defendant shall apply the 0.33 ppm PCB remediation goal to the four areas identified in Section 7.2 and Figure 2 of the ROD. In the event of future EPA decision-making, Settling Defendant reserves its right to evaluate appropriate wetland areas to address potential risks associated with a sediment-to-fish consumer exposure pathway at other operable units and areas of the Site.

c. Settling Defendant shall also reimburse the United States for EPA Past Response Costs and for Future Costs.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and state

environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendant, shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Settling Defendant that is located within OU2, within 15 days after the entry of this Consent Decree, the Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Kalamazoo County Clerk/Register Office, which shall provide notice to all successors-in-title that the property is part of OU2, that EPA selected a remedy for OU2 on September 27, 2006, and that the potentially responsible party has entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice within 10 days of EPA's approval of the notice. The Settling Defendant shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

b. At least 30 days prior to the conveyance of any interest in property located within OU2 including, but not limited to, fee interests, leasehold interests, and mortgage interests, Settling Defendant shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to OU2 (hereinafter referred to as "access easements") pursuant to Section VII (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access

and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

V. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections V (Performance of the Work by Settling Defendant), VI (Remedy Review), VII (Quality Assurance, Sampling and Data Analysis), and XIV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendant shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, who would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XVII (Force Majeure) hereof.

11. Remedial Design.

a. Within 30 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendant shall submit to EPA and the State, with copies to the Trustees, the Remedial Design Work Plan. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW.

b. Upon its approval by EPA, after notice and an opportunity to comment by the State and the Natural Resource Trustees, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 30 days after EPA's issuance of an authorization to proceed, Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field design activities, which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with section VII (Quality Assurance, Sampling and Data Analysis)); and (2) a Construction Quality Assurance Plan; and may also include: (1) a treatability study; (2) a Pre-design Work Plan; (3) a preliminary design submittal; (4) a pre-final design submittal; and (5) a final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

d. Upon approval of the Remedial Design Work Plan by EPA after notice and an opportunity to comment by the State and the Natural Resource Trustees and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendant shall implement the Remedial Design Work Plan. Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Settling Defendant shall notify the Trustees of all plans, submittals, and other deliverables submitted to EPA and/or the State pursuant to this subparagraph and provide a copy of any such submission to the Trustees upon request. Unless otherwise directed by EPA, Settling Defendant shall not commence further Remedial Design activities at OU2 prior to approval of the Remedial Design Work Plan.

e. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies, if conducted; (3) results of additional field sampling and pre-design work; (4) a project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) a preliminary construction schedule.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) an Operation and Maintenance Plan; (3) a Construction Quality Assurance Project Plan ("CQAPP"); (4) a Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) a Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at OU2, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

a. Within 30 days after the approval of the final design submittal, Settling Defendant shall submit to EPA, with copies to the Trustees and the State, the Remedial Action Work Plan. The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time that Settling Defendant submits the Remedial Action Work Plan, Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include, but not be limited to, the following: (1) a schedule for completion of the Remedial Action; (2) a method for selection of the contractor; (3) a schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) a tentative formulation of the Remedial Action team; (9) a construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of Settling Defendant's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after notice and an opportunity to comment by the State and Natural Resource Trustees, Settling Defendant shall implement the activities required under the Remedial Action Work Plan. Settling Defendant shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Settling Defendant shall notify the Trustees of all plans, submittals, and other deliverables submitted to EPA and/or the State pursuant to this subparagraph and provide a copy of any such submission to the Trustees upon request. Unless otherwise directed by EPA, Settling Defendant shall not commence physical Remedial Action activities at OU2 prior to approval of the Remedial Action Work Plan.

13. Settling Defendant shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD, as set forth in Appendix A ("Record of Decision for the Willow Boulevard/A-Site Landfill Operable Unit 2 dated September 27, 2006").

b. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Settling Defendant may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. a. Settling Defendant shall, prior to any off-site shipment of Waste Material from OU2 to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by Settling Defendant following the award of the contract for Remedial Action construction. Settling Defendant shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from OU2 to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendant shall only send hazardous substances, pollutants, or contaminants from OU2 to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VI. REMEDY REVIEW

17. Periodic Review. Settling Defendant shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for OU2 in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Defendant's Obligation To Perform Further Response Actions. If EPA determines that the remedial action is not protective of human health and the environment, Settling Defendant shall undertake such further response actions to the extent that the reopener conditions in Paragraph 87 or Paragraph 88 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendant may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 87 or Paragraph 88 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective of human health and the environment or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 70 in Section XVIII (Dispute Resolution).

21. Submissions of Plans. If Settling Defendant is required to perform further response actions pursuant to Paragraph 20, Settling Defendant shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section V (Performance of

the Work by Settling Defendant) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories Settling Defendant utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, Settling Defendant may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendant shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deem necessary. Upon request, EPA shall allow Settling Defendant to take split or duplicate samples of any

samples it takes as part of the Plaintiff's oversight of Settling Defendant's implementation of the Work.

24. Settling Defendant shall submit to EPA and to the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to OU2 and/or the implementation of this Consent Decree unless EPA agrees otherwise. Upon written approval by EPA's Project Coordinator, Settling Defendant may electronically submit results of sampling and other data.

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

VIII. ACCESS AND INSTITUTIONAL CONTROLS

26. If OU2, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by Settling Defendant, Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State and their representatives, including EPA, MDEQ and their respective contractors, with access at all reasonable times to OU2, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near
OU2;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional
response actions at or near OU2;
- (6) Assessing implementation of quality assurance and quality control
practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in
Paragraph 91 of this Consent Decree;
- (8) Inspecting and copying records, operating logs, contracts, or other
documents maintained or generated by Settling Defendant or its agents, consistent with
Section XXIII (Access to Information);

(9) Assessing Settling Defendant's compliance with this Consent Decree; and

(10) Determining whether OU2 or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, provide the Trustees and their respective contractors, with access at all reasonable times to OU2, or such other property, for the purpose of conducting the following activities:

- (1) Observing the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations relating to contamination at or near OU2;
- (4) Obtaining samples;

(5) Assessing the extent to which the Work has resulted in the Natural Resources at OU2 returning to the condition they would have been in had the release of hazardous substances not occurred.

c. commencing on the date of lodging of this Consent Decree, refrain from using OU2, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

d. execute and record in the Kalamazoo County Clerk/Register Office a declaration of restrictive covenant and environmental easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) grants the right to enforce land/water use restrictions or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Settling Defendant shall grant the access rights to MDEQ, EPA as a third-party beneficiary, and the designated representatives of EPA and MDEQ. Settling Defendant shall grant the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, as a third-party beneficiary, and its representatives, (ii) MDEQ and its representatives, and/or (iii) other appropriate grantees. Settling Defendant shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property owned by the Owner Settling Defendant:

- (1) A draft declaration of restrictive covenant and environmental easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Michigan, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Owner Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

Within 45 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the declaration of restrictive covenant and environmental easement with the Kalamazoo County Clerk/Register Office. Within 30 days of recording the declaration of restrictive covenant and environmental easement, Settling Defendant shall provide EPA with a final title insurance commitment, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement, certified by the County Clerk/Register Office, showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

27. If OU2, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such person(s):

a. an agreement to provide access thereto for Settling Defendant, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree;

b. an agreement to provide access thereto for the Trustees and their representatives (including contractors), for the purpose of conducting those activities listed in Paragraph 26.b of this Consent Decree;

c. an agreement, enforceable by Settling Defendant and the United States, to refrain from using OU2, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree;

d. the execution and recordation in the Kalamazoo County Clerk/Register Office, of a declaration of restrictive covenant and environmental easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) grants the right to enforce land/water use restrictions or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights shall be granted to MDEQ, EPA as a third-party beneficiary, and the designated representatives of EPA and MDEQ. The rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, as a third-party beneficiary, and its

representatives, (ii) MDEQ and its representatives, and/or (iii) other appropriate grantees. The agreements referenced in Paragraphs 27.a and 27.b of this Consent Decree may be incorporated into the declaration of restrictive covenant and environmental easement described in this Paragraph 27.c. Within 45 days of entry of this Consent Decree, Settling Defendant shall submit to EPA for review and approval with respect to such property:

(1) A draft declaration of restrictive covenant and environmental easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Michigan, and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

Within 45 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall obtain from the third party an executed declaration of restrictive covenant and environmental easement and update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the declaration of restrictive covenant and environmental easement shall be recorded with the Kalamazoo County Clerk/Register Office. Within 30 days of the recording of the declaration of restrictive covenant and environmental easement, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement, certified by the County Clerk/Register Office, showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

28. For purposes of Paragraphs 26 and 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive declarations and easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 27.a or 27.b of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) or any access easements or restrictive easements required by Paragraph 27.c of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 26.c.(2) or Paragraph 27.c.(2) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of entry of this Consent Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 26 or 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall

reimburse the United States in accordance with the procedures in Section XV (Payments), for all costs incurred, directly or indirectly, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

IX. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit three copies to EPA and the State and one copy to each Trustee of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six to twelve week period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) describe any problems that were encountered during the previous month, including but not limited to, problems with construction activities required under this Decree; (g) include a description of any corrective actions or modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA, the Trustees, and the State by the fifteenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendant pursuant to Paragraph 53.b of Section XIII (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA, the Trustees, and the State to discuss the progress of the Work. Settling Defendant may request a decrease in the frequency and scope of the progress reports from EPA's Project Coordinator at appropriate points in the Work. Granting a decrease in the frequency or scope of the progress reports shall be solely within EPA's discretion and not subject to dispute resolution under Section XVIII.

32. Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Branch, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendant shall submit three copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two copies of all such plans, reports and data to the State. Upon request by EPA Settling Defendant shall submit in electronic form all portions of any report or other deliverable Settling Defendant is required to submit pursuant to the provisions of this Consent Decree. Settling Defendant shall notify the Trustees of all plans, submittals, and other deliverables submitted to EPA and/or the State pursuant to this subparagraph and provide a copy of any such submission to each Trustee upon request.

36. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Natural Resource Trustees and the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material

defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. Resubmission of Plans.

a. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

b. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendant shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX (Stipulated Penalties), shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendant invokes the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent

Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XI. PROJECT COORDINATORS

43. Within 20 days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as an OU2 representative for oversight of performance of daily operations during remedial activities.

44. EPA may designate other representatives, including, but not limited to, EPA, Trustee, or State employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at OU2 constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. EPA's Project Coordinator and Settling Defendant's Project Coordinator will meet in person or via conference call, at a minimum, on a monthly basis, unless EPA's Project Coordinator agrees to meet on a greater or less frequent basis.

XII. PERFORMANCE GUARANTEE

46. In order to ensure the full and final completion of the Work, Settling Defendant shall establish and maintain a Performance Guarantee for the benefit of EPA in the total amount of \$12.7 million (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

- a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters

of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by Settling Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

47. Settling Defendant has selected, and EPA has approved, as an initial Performance Guarantee, an environmental Surety Bond in the forms attached hereto jointly as Appendix F. Within ten days after the Effective Date, Settling Defendant shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the documents attached hereto as Appendix F, and such Performance Guarantee shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, Settling Defendant shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to the EPA Regional Financial Management Officer in accordance with Section XXV (Notices and Submissions) of this Consent Decree, with a copy to Cyprian O. Ejiasa, Regional Comptroller, U.S. EPA, Region 5, (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, and to the United States and EPA as specified in Section XXVI.

48. If at any time during the effective period of this Consent Decree, Settling Defendant provides a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 46.e or Paragraph 46.f above, Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the

financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XII, references in 40 C.F.R. Part 264, Subpart H, to “closure,” “post-closure,” and “plugging and abandonment” shall be deemed to refer to the Work required under this Consent Decree, and the terms “current closure cost estimate” “current post-closure cost estimate,” and “current plugging and abandonment cost estimate” shall be deemed to refer to the Estimated Cost of the Work.

49. In the event that EPA determines at any time that a Performance Guarantee provided by Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendant, within 45 days of receipt of notice of EPA’s determination or, as the case may be, within 45 days of Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 46 of this Consent Decree that satisfies all requirements set forth in this Section XII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 51.b.(2) of this Consent Decree. Settling Defendant’s inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Work in strict accordance with the terms hereof.

50. The commencement of any Work Takeover pursuant to Paragraph 91 of this Consent Decree shall trigger EPA’s right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 46(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 46(e), Settling Defendant shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

51. Modification of the Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Settling Defendant believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining

Work to be performed. Settling Defendant shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 51.b.(2) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendant of such decision in writing. After receiving EPA's written acceptance, Settling Defendant may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendant may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 49 or 51.b of this Consent Decree.

b. Change of Form of Performance Guarantee

(1) If, after entry of this Consent Decree, Settling Defendant desires to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 51.b.(2) of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph b(1) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendant shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendant shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer in accordance with Section XXV (Notices and Submissions) of this Consent Decree[, with a copy to Cyprian O. Ejiasa, Regional Comptroller, U.S. EPA, Region 5, (MF-10J), 77. W. Jackson Blvd., Chicago, IL 60604-3590. EPA shall notify Settling Defendant in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within 20 days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantees legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling

Defendant shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXV (Notices and Submissions) of this Consent Decree, with a copy to Cyprian O. Ejiasa, Regional Comptroller, U.S. EPA, Region 5, (W-10J), 77. W. Jackson Blvd., Chicago, IL 60604-3590, and to the United States and EPA as specified in Section XXV.

c. Release of Performance Guarantee. When Settling Defendant receives written notice from EPA that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, Settling Defendant may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. EPA shall release the original Performance Guarantee instrument to Settling Defendant within thirty days of Settling Defendant's receipt of the notice from EPA specified in the previous sentence. Settling Defendant shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Subparagraph. In the event of a dispute, Settling Defendant may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIII. CERTIFICATION OF COMPLETION

52. Completion of the Remedial Action.

a. Within 90 days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, the Trustees, and the State. If, after the pre-certification inspection, Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification by EPA for approval, with copies to the Trustees and the State, pursuant to Section X (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. The report shall include the following items, if determined to be necessary by EPA:

- Brief description of how outstanding items noted in the Pre-final Inspection were resolved;
- Explanation of modifications made during the RA to the approved RD and RA Work Plans and why these changes were made;
- As-built drawings; and
- Synopsis of the work defined in the SOW and a demonstration in accordance with the Performance Standards Verification Plan that Performance Standards have been achieved;
- Certification that the RA has been completed in full satisfaction of the requirements of the Consent Decree and this SOW; and
- if O&M has commenced, description of how Settling Defendant will implement any remaining part of the U.S. EPA approved O&M Plan.

- a summary of the respective mitigation objectives and the actions implemented to meet those objectives;
- a certification that all work plans, specifications, and schedules have been implemented and completed in accordance with the respective plans approved by EPA;
- as-built plan drawings, including vegetation established and erosion controls remaining in place;
- a discussion of difficulties encountered during project implementation that may alter or reduce the effectiveness of the respective mitigation and any implemented or planned corrective actions; and
- a discussion of any necessary modifications to the operation and maintenance procedures as approved.

In the report, a registered professional engineer and Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall identify any performance standards that have not been met as of the date of the report, and include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after notice and an opportunity to comment by the State and Trustees, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as set forth in Appendix A, (Record of Decision for the Willow Boulevard/A-Site Landfill (OU2) dated September 27, 2006). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after notice and an opportunity to comment by the State and the

Trustees, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

53. Completion of the Work.

a. Within 90 days after Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA (with notice and an opportunity to attend to the Trustees and State. If, after the pre-certification inspection, Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after notice and an opportunity to comment by the State and Trustees, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after notice and an opportunity to comment by the State and Trustees, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendant in writing.

XIV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from OU2 that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendant shall notify the EPA Emergency Response Branch, Region 5. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payments).

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU2, or b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from OU2, subject to Section XX (Covenants Not to Sue by Plaintiff).

XV. PAYMENTS

56. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendant shall pay to EPA \$225,509.91 for EPA Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2009V00245, EPA Site/Spill ID Number 059B, the "Willow Boulevard/A-Site Landfill, Operable Unit 2," and DOJ Case Number 90-11-2-07912. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Michigan (Southern Division) following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXV (Notices and Submissions).

c. The total amount to be paid by Settling Defendant pursuant to Subparagraph 56.a shall be deposited in the Allied Paper, Inc./Portage Creek/Kalamazoo River Special Account within the EPA Hazardous Substance Superfund to be retained and used to

conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

57. Payments for Future Costs.

a. Settling Defendant shall pay to EPA all Future Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendant a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, including costs of its contractors, and a DOJ-prepared cost summary which reflects costs incurred by DOJ and its contractors, if any. Settling Defendant shall make all payments within 45 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 58 according to the following procedures.

(1) If the payment amount demanded in the bill is more than \$10,000, payment shall be made to U.S. EPA by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Defendant by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the Settling Defendant, the Site name, U.S. EPA Region 5, the Site/Spill ID Number 059B, the and the Court docket number for this action.

(2) If the amount demanded in the bill is \$10,000 or less, Settling Defendant may in lieu of the procedures in subparagraph 57.a(i) make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 059B, the "Willow Boulevard/A-Site Landfill, Operable Unit 2," and DOJ Case Number 90-11-2-07912. Settling Defendant shall send the check(s) to:

U.S. Environmental Protection Agency, Region 5
Superfund Program Accounting & Analysis Section
P.O. Box 371531
Pittsburgh, PA 15251-7531

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. All payments required by Subparagraph 57.a shall be deposited in the Allied Paper, Inc./Portage Creek/Kalamazoo River Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

58. Settling Defendant may contest payment of any Future Costs required under Paragraph 57 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the United States pursuant to Section XXV (Notices and Submissions). Any such objection shall specifically identify the contested Future Costs and the basis for objection. In the event of an objection, Settling Defendant shall within the 45-day period pay all uncontested Future Costs to

the United States in the manner described in Paragraph 57. Simultaneously, Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future Costs. Settling Defendant shall send to the United States, as provided in Section XXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If the United States prevails in the dispute, within 10 days of the resolution of the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 57. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 57; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Costs.

59. In the event that the payments required by Subparagraph 56.a are not made within 30 days of the Effective Date or the payments required by Paragraph 57 are not made within 45 days of Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 73. Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 57.

XVI. INDEMNIFICATION AND INSURANCE

60. Settling Defendant's Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States all

costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any of its contractors shall be considered an agent of the United States.

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 60, and shall consult with Settling Defendant prior to settling such claim.

61. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to OU2, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to OU2, including, but not limited to, claims on account of construction delays.

62. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 52.b of Section XIII (Certification of Completion) comprehensive general liability insurance with limits of 2.5 million dollars, combined single limit, and automobile liability insurance with limits of 2.5 million dollars, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date, unless such policies have not changed from the the prior year and Settling Defendant receives confirmation from EPA that the existing copies of policies on file with EPA will be maintained until the next anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVII. FORCE MAJEURE

63. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 1 day of when Settling Defendant first knew that the event might cause a delay. Within 5 days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

65. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

66. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a

preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 63 and 64, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVIII. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

68. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

69. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, and the period for informal negotiations has not been modified pursuant to Paragraph 68 above, then the position advanced by EPA shall be considered binding unless, within 5 business days after the conclusion of the informal negotiation period, Settling Defendant notifies EPA in writing of its decision to invoke the formal dispute resolution procedures of this Section and, within 14 business days after conclusion of the informal negotiation period, serve upon the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. If the period for informal negotiations has been modified pursuant to Paragraph 68, then the position advanced by EPA shall be considered binding unless, within 5 business days of Settling Defendant's receipt of EPA's written notice that the period of informal negotiations has ended, Settling Defendant notifies EPA in writing of its decision to invoke the formal dispute resolution procedures of this Section and, within 14 business days after conclusion of the informal negotiation period, serve upon the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. In either event, the Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 70 or Paragraph 71.

b. Within 21 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied

upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 70 or 71. Within 14 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 70 or 71, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 70 and 71.

70. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action, including the modification of the SOW or any related work plans, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 70.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 70.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 70.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within 10 business days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 70.a.

71. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 69, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Settling Defendant unless, within 10 business days of receipt of the decision, Settling Defendant files with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

72. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendant under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 81. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XIX. STIPULATED PENALTIES

73. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 74 and 75 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

74. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 74.b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$750.00 | 1st through 14th day |
| \$1,000 | 15th through 30th day |
| \$1,500 | 31st day and beyond |

b. Compliance Milestones.

(1) Failure to submit and, if required by EPA, modify any and all draft and final Remedial Design and Remedial Action Work Plans in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(2) Failure to submit and, if required by EPA, modify any significant deliverables as identified in the EPA approved Remedial Design and Remedial Action Work Plans in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(3) Failure to implement the approved Remedial Design and Remedial Action Work Plans in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(4) Failure to submit and, if required by EPA, modify Preliminary Pre-Final and Final Remedial Design and any significant deliverables as identified in the approved Final Remedial Design(s) in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(5) Failure to complete the Remedial Action(s) required under this Consent Decree and the attached SOW in accordance with the schedule and requirements set forth in those documents;

(6) Failure to submit and, if required by EPA, modify Remedial Action Reports in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(7) Failure to submit and, if required by EPA, modify the O&M Plan in accordance with the schedule and requirements set forth in this Consent Decree and the attached SOW;

(8) Failure to perform further response actions and additional Work in accordance with the schedule and requirements set forth in Sections V and VII of this Consent Decree;

(9) Failure to obtain access and/or institutional controls in accordance with the schedule and requirements set forth in Section VIII of this Consent Decree.

75. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to this Consent Decree:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$100 | 1st through 14th day |
| \$250 | 15th through 30th day |
| \$500 | 31st day and beyond |

76. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 90 of Section XX (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$250,000.

77. The following stipulated penalties shall accrue for each day Settling Defendant fails to pay in a timely manner any costs required under Section XV (Payments):

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$500 | 1st through 14th day |
| \$1,000 | 15th through 30th day |
| \$2,000 | 31st day and beyond |

78. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 70.b or 71.a of Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XVIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

79. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send Settling Defendant a written demand

for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendant of a violation.

80. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XVIII (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Region 5, P.O. Box 371531, Pittsburgh, PA 15251-7531, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #059B, the DOJ Case #90-11-2-07912, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXV (Notices and Submissions).

81. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

82. Penalties shall continue to accrue as provided in Paragraph 78 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 20 business days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 20 business days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

83. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 80.

84. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(I) of CERCLA, provided, however, that the United States shall not seek civil penalties

pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

85. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XX. COVENANTS NOT TO SUE BY UNITED STATES

86. General Scope of Covenant. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, 90 and 92 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of EPA Past Response Costs and Future Costs. Except with respect to future liability, these covenants not to sue shall take effect upon receipt by EPA of the payments required by Paragraph 56.a of Section XV (Payments) and any Interest or stipulated penalties due thereon under Paragraphs 59 and 73. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 52.b of Section XIII (Certification of Completion) and receipt of payment for Future Costs pursuant to Paragraph 57 and any Interest or stipulated penalties due thereon under Paragraphs 59 and 73. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

87. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

- a. to perform further response actions relating to OU2, or
- b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:
 - (1) conditions at OU2, previously unknown to EPA, are discovered, or
 - (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

88. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant

- a. to perform further response actions relating to OU2, or
- b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:
 - (1) conditions at OU2, previously unknown to EPA, are discovered, or
 - (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

89. For purposes of Paragraph 87, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for OU2 and the administrative record supporting the Record of Decision. For purposes of Paragraph 88, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

90. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of OU2;
- c. liability based on transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at OU2, other than as provided in the ROD, the Work, or otherwise ordered by EPA or authorized by law, after signature of this Consent Decree by Settling Defendant;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);

h. liability for additional operable units at the Site or the final response action, including Operable Unit 5, the Kalamazoo River; and

i. liability for costs that the United States has incurred or will incur related to the Site but are not within the definitions of EPA Past Response Costs or Future Costs in Paragraph 4 (Definitions).

91. Work Takeover

a. In the event EPA determines that Settling Defendant has (i) ceased implementation of any portion of the Work, or (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 91.a, Settling Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this subparagraph.

c. Settling Defendant may invoke the procedures set forth in Section XVIII (Dispute Resolution), Paragraph 70, to dispute EPA's implementation of a Work Takeover under Paragraph 91.b. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 91.b until the earlier of (i) the date that Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVIII (Dispute Resolution), Paragraph 70, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XII of this Consent Decree, in accordance with the provisions of Paragraph 50 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and Settling Defendant fails to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 50, any unreimbursed costs incurred by EPA in performing Work under

the Work Takeover shall be considered Future Costs that Settling Defendant shall pay pursuant to Section XV (Payments).

92. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANTS BY SETTLING DEFENDANT

93. Covenant Not to Sue. Subject to the reservations in Paragraph 95, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work; past response actions; EPA Past Response Costs as defined herein; and Future Costs as defined herein; or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to OU2, or

c. any claims arising out of response actions at or in connection with OU2, including any claim under the United States Constitution, the Michigan Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

94. Except as provided in Paragraph 97 (Waiver of Claims Against De Micromis Parties) and Paragraph 102 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 87, 88, 90 (b) - (d) or 90 (g) - (i), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

95. Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

96. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

97. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to OU2, including for contribution, against any person where the person's liability to Settling Defendant with respect to OU2 is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at OU2, or having accepted for transport for disposal or treatment of hazardous substances at OU2, if:

a. the materials contributed by such person to OU2 containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at OU2, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. this waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to OU2 by such person contributed or could contribute significantly to the costs of response at OU2. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to OU2 against Settling Defendant.

XXII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

98. Except as provided in Paragraph 97 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 97 (Waiver of Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to OU2 against any person not a Party hereto.

99. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are solely the Work; Past Response Costs; and Future Costs. The "matters addressed" in this Consent Decree do not include response actions or response costs with respect to any other area or operable unit at the Site, including Operable Unit 5, the Kalamazoo River, or those response actions or those response costs as to which the United States has reserved its rights in Paragraphs 87, 88, 89, and 90 of this Consent Decree (except for claims for failure to comply with this Consent Decree).

100. Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

101. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify in writing the United States within 10 days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

102. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XX (Covenants Not to Sue by Plaintiff).

XXIII. ACCESS TO INFORMATION

103. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at OU2 or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

104. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a document, record or

other information, such information shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendant shall retain all documents, records and other information that it claims to be privileged until the United States has had an opportunity to dispute the privilege claim and any such dispute has been resolved. No documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

105. No claim of privilege or confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around OU2.

XXIV. RETENTION OF RECORDS

106. Until 10 years after Settling Defendant's receipt of EPA's notification pursuant to Paragraph 53.b of Section XIV (Certification of Completion), Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to OU2 or that relate to the liability of any other person under CERCLA with respect to OU2. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

107. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

108. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding OU2 since notification of potential liability by the United States or

the State or the filing of suit against it regarding OU2 and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXV. NOTICES AND SUBMISSIONS

109. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, the Trustees, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-11-2-07912

As to EPA:

Director, Superfund Division
U.S. EPA, Region 5, Mail Code: S-6J
77 W Jackson Blvd.
Chicago, IL 60604-3590

Michael Berkoff
Remedial Project Manager
U.S. EPA, Region 5, Mail Code SR-6J
77 W Jackson Blvd.
Chicago, IL 60604-3590

Nicole Wood-Chi
Assistant Regional Counsel
U.S. EPA, Region 5, Mail Code C14-J
77 W Jackson Blvd.
Chicago, IL 60604-3590

Leslie Kirby-Miles
Associate Regional Counsel
U.S. EPA, Region 5, Mail Code C14-J
77 W Jackson Blvd.
Chicago, IL 60604-3590

As to EPA's Regional Financial Management Officer:

EPA Regional Financial Management Office
Anthony Audia, Chief
Program Accounting and Analysis Section
U.S. EPA, Region 5, Mail Code MF-10J
77 W Jackson Blvd.
Chicago, IL 60604-3590

As to the State:

Paul Bucholtz
Environmental Response Division
Michigan Department of Environmental Quality
Constitution Hall
525 West Allegan St.
P.O. Box 30426
Lansing, MI 48909-7926

As to the Trustees:

Lisa L. Williams, Ph.D
U.S. Fish and Wildlife Service
2651 Coolidge Road, Suite 101
East Lansing, MI 48823

Todd Goeks
NOAA Office of Response and Restoration
Mail Code SR-6J
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Judith Gapp
Remediation and Redevelopment Division
Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909

Sharon Hanshue
MDNR -Fisheries Division
P.O. Box 30446
Lansing, MI 48909-7946

Polly A. Synk
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
Department of Attorney General
P.O. Box 30755
Lansing, MI 48909

As to Settling Defendant:

Patrick McGuire
Principal Environmental Engineer
Arcadis U.S. Inc.
6723 Towpath Road, Box 66
Syracuse, NY 13214

XXVI. EFFECTIVE DATE

110. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVII. RETENTION OF JURISDICTION

111. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVIII (Dispute Resolution) hereof.

XXVIII. APPENDICES

112. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is the Record of Decision for the Willow Boulevard/A-Site Landfill (OU2) dated September 27, 2006

Appendix B is a figure of OU2.

Appendix C is the SOW.

Appendix D is a map of the Site.

Appendix E is a draft Declaration of Restrictive Covenant and Environmental Easement

Appendix F is a draft environmental surety bond.

XXIX. COMMUNITY RELATIONS

113. Settling Defendant shall propose to EPA that it participate in the community relations plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall

participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to OU2.

XXX. MODIFICATION

114. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendant. All such modifications shall be made in writing.

115. Material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the Parties, and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by the Parties. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

116. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

117. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

118. Each undersigned representative of a Settling Defendant to this Consent Decree and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

119. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

120. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local

rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIII. FINAL JUDGMENT

121. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

122. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.


SO ORDERED THIS ____ DAY OF _____, 2009.

PAUL L. MALONEY
Chief United States District Judge

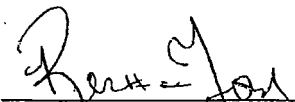
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Georgia-Pacific, LLC, relating to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date 5/9/09

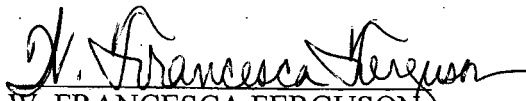

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date 5/9/09


RENITA Y. FORD
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

DONALD DAVIS
United States Attorney
Western District of Michigan

Date: 5/18/09


W. FRANCESCA FERGUSON
Assistant United States Attorney
Post Office Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404
Email: francesca.ferguson@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Georgia-Pacific, LLC, relating to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site.

4/17/2009
Date

Walter W. Koralick
for
Bharat Mathur
Acting Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, IL 60604-3590

4/21/09
Date

Nicole M. Wood-Chi
Nicole Wood-Chi
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

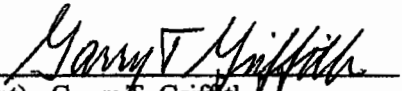
4/21/09
Date

Leslie Kirby-Miles
Leslie Kirby-Miles
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Georgia-Pacific, LLC, relating to the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site.

FOR Georgia-Pacific, LLC

March 27, 2009
Date

Signature: 
Name (print): Garry T. Griffith
Title: Director Environmental Field Services
Address: 951 County Street
Milan, Michigan 48160

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print):
Title:
Address:

J. Michael Davis
Assistant General Counsel
Georgia-Pacific LLC
133 Peachtree Street NE
Atlanta, GA 30303-1847
(404) 652-7497

Ph. Number:

Appendix A

EPA Region 5 Records Ctr.



249483

**Willow Boulevard/A-Site Landfill
Operable Unit 2
Kalamazoo Township, Michigan**

*of the
Allied Paper, Inc./Portage Creek/Kalamazoo River
Superfund Site*

Record of Decision



**Prepared by
U.S. Environmental Protection Agency
Region 5
Chicago, Illinois**

September 2006

RECORD OF DECISION
WILLOW BOULEVARD/A-SITE LANDFILL
OPERABLE UNIT 2
of the
Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site

| | |
|---------------------------------|-----|
| List of Tables | iii |
| List of Figures | iv |
| List of Photographs | iv |
| List of Attachments | iv |
| List of Appendices | iv |
| Acronyms and Abbreviations..... | v |

PART I - DECLARATION

| | |
|--|---|
| 1.1 Site Name and Location..... | 1 |
| 1.2 Statement of Basis and Purpose..... | 1 |
| 1.3 Assessment of Site..... | 1 |
| 1.4 Description of Selected Remedy..... | 1 |
| 1.5 Statutory Determinations..... | 3 |
| 1.6 Record of Decision Data Certification Checklist..... | 4 |
| 1.7 Authorizing Signature..... | 4 |

PART II - DECISION SUMMARY

| | |
|--|----|
| 1.0 Site Name, Location and Brief Description..... | 5 |
| 2.0 Site History and Enforcement Activities..... | 6 |
| 3.0 Community Participation..... | 7 |
| 4.0 Scope and Role of Response Action..... | 7 |
| 5.0 Site Characteristics..... | 9 |
| 5.1 Conceptual Site Model..... | 9 |
| 5.2 Site Overview..... | 10 |
| 5.3 Sampling Strategy..... | 11 |
| 5.4 Source of Contamination..... | 14 |
| 5.5 Types of Contaminants and Affected Media..... | 14 |
| 5.6 Extent of Contamination..... | 14 |

| | | |
|-------|--|----|
| 6.0 | Current and Potential Future Land and Resource Uses..... | 19 |
| 7.0 | Summary of Site Risks..... | 19 |
| 7.1 | Identification of Contaminants of Concern..... | 21 |
| 7.2 | Summary of Qualitative Evaluation of Potential Risks to Human Health and Ecological Receptors at OU2..... | 21 |
| 7.3 | Basis for Action..... | 26 |
| 8.0 | Remedial Response Objectives and ARARs..... | 26 |
| 8.1 | Remedial Response Objectives..... | 26 |
| 8.2 | Applicable or Relevant and Appropriate Requirements (ARARs)..... | 26 |
| 9.0 | Description of Alternatives..... | 27 |
| 9.1 | Description of Alternatives/Remedy Components..... | 28 |
| 9.1.1 | Alternative 1 – No Action | 28 |
| 9.1.2 | Alternative 2 – Consolidation & Containment of Select Materials | 28 |
| 9.1.3 | Sub-alternative 2A – Consolidation & Containment of Select Materials, Install New Sheet Piling at Willow Boulevard Landfill & Retain Existing Sheet Piling at A-Site Landfill ... | 29 |
| 9.1.4 | Sub-alternative 2B – Consolidation & Containment of Select Materials, Remove Existing Sheet Piling at A-Site, Re-Grade/Stabilize Banks with Setback at Willow Boulevard & A-Site Landfills..... | 29 |
| 9.1.5 | Sub-alternative 2C – Consolidation & Containment of Select Materials, Re-Grade/Stabilize Banks using Ecologically Friendly Materials with Setback at Willow Boulevard, & Retain Existing Sheet Piling at A-Site Landfill | 30 |
| 9.1.6 | Alternative 3 - Removal and Off-Site Disposal | 30 |
| 9.1.7 | Alternative 4 - Removal of Willow Boulevard Landfill Residuals & Consolidation at the A-Site Landfill | 31 |
| 9.2 | Common Elements and Distinguishing Features of Each Alternative..... | 32 |
| 9.2.1 | Common Elements..... | 32 |
| 9.2.2 | Distinguishing Features..... | 32 |
| 10.0 | Summary of Comparative Analysis of Alternatives..... | 32 |
| 10.1 | Overall Protection of Human Health and the Environment..... | 34 |
| 10.2 | Compliance with Applicable or Relevant and Appropriate Requirements..... | 34 |
| 10.3 | Long-Term Effectiveness and Permanence..... | 36 |
| 10.4 | Reduction of Toxicity, Mobility, or Volume Through Treatment..... | 36 |
| 10.5 | Short-Term Effectiveness..... | 36 |
| 10.6 | Implementability..... | 37 |
| 10.7 | Cost..... | 37 |

| | | |
|--|---|-----------|
| 10.8 | State Agency Acceptance..... | 38 |
| 10.9 | Community Acceptance..... | 38 |
| 11.0 | Principal Threat Wastes..... | 38 |
| 12.0 | Selected Remedy..... | 39 |
| 12.1 | Summary of the Rational for the Selected Remedy | 39 |
| 12.2 | Description of the Selected Remedy..... | 40 |
| 12.3 | Summary of the Estimated Remedy Costs and Time Required for Implementation..... | 41 |
| 12.4 | Expected Outcomes of the Selected Remedy..... | 41 |
| 13.0 | Statutory Determinations..... | 41 |
| 13.1 | Protection of Human Health and the Environment..... | 42 |
| 13.2 | Compliance with Applicable or Relevant and Appropriate Requirements | 42 |
| 13.2.1 | Chemical-Specific ARARs..... | 42 |
| 13.2.2 | Action- and Location-Specific ARARs..... | 44 |
| 13.3 | Cost Effectiveness..... | 46 |
| 13.4 | Utilization of Permanent Solutions and Alternative Treatment Technologies to the Maximum Extent Practicable..... | 47 |
| 13.5 | Preference for Treatment as a Principal Element..... | 47 |
| 13.6 | Five-Year Review Requirements..... | 47 |
| 14.0 | Documentation of Significant Changes..... | 47 |
| PART III- RESPONSIVENESS SUMMARY..... | | 48 |
| 1.0 | Background | 48 |
| 1.1 | Information Repository | 48 |
| 1.2 | Public Notices, Fact Sheets and Public Comment Period | 49 |
| 1.3 | Public Meeting and Hearing | 49 |
| 2.0 | Summary of Public Comments | 49 |
| 2.1 | Proposed Plan and Cleanup Comments | 52 |
| 2.2 | Other Community Comments and Concerns | 61 |
| 2.3 | PRP Comments | 66 |

LIST OF TABLES

| | | |
|---------|---|----|
| Table 1 | Cleanup Status of Operable Units | 7 |
| Table 2 | Pre-RI Areas Sampled, Media Investigated, & Analytical Parameters.. | 11 |
| Table 3 | RI Areas Sampled, Media Investigated, & Analytical Parameters ...; | 12 |
| Table 4 | Estimated Volume of PCB-Contaminated Material..... | 15 |

| | | |
|---------|--|----|
| Table 5 | Maximum PCB Concentrations, Applicable Cleanup Criteria, Area & Media Targeted For Remediation..... | 22 |
|---------|--|----|

LIST OF FIGURES

| | |
|-----------|--|
| Figure 1 | Site Location Map |
| Figure 2 | OU2 and Adjacent Areas |
| Figure 3 | Map of Allied Paper Inc./Portage Creek/Kalamazoo River Site |
| Figure 4 | Aerial View of OU2 |
| Figure 5 | Water Well Locations Within ½ - Mile & ¼ - Mile of OU2 |
| Figure 6 | Sample Locations (Pre-RI to 1996) |
| Figure 7 | Supplemental RI Sample Locations & Results–Area South of A-Site Berm |
| Figure 8 | Supplemental RI Sample Locations & Results–AMW-3A |
| Figure 9 | Supplemental RI Sample Locations & Results–East of Davis Creek |
| Figure 10 | Supplemental RI Sample Locations – Residential Areas |

LIST OF PHOTOGRAPHS

| | |
|--------------|---|
| Photograph 1 | Torn Geofabric & Exposed Waste at Willow Boulevard Landfill |
| Photograph 2 | Exposed Residuals at A-Site Landfill |

ATTACHMENTS

| | |
|--------------|---|
| Attachment 1 | Detailed Cost Estimate for Sub-alternatives 2A, 2B, 2C and Alternative 3 and Alternative 4 |
| Attachment 2 | Detailed Cost Estimate for Selected Remedy |

APPENDICES

| | |
|------------|-----------------------------|
| Appendix A | Administrative Record Index |
|------------|-----------------------------|

LIST OF ACRONYMS AND ABBREVIATIONS

| | |
|------------------|---|
| AOC | administrative order on consent |
| ARAR | applicable or relevant and appropriate requirement |
| BERA | baseline ecological risk assessment |
| BGS | below ground surface |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act |
| CERCLIS | Comprehensive Environmental Response, Compensation, and Liability Information Systems |
| CFR | Code of Federal Regulations |
| CSM | conceptual site model |
| CYD ³ | cubic yards |
| FS | feasibility study |
| MDEQ | Michigan Department of Environmental Quality |
| MDNR | Michigan Department of Natural Resources |
| mg/kg | milligrams per kilogram |
| NHPA | National Historic Preservation Act |
| IRA | Interim Response Action |
| LOAEL | Lowest Observed Adverse Effect Level |
| NCP | National Oil and Hazardous Substances Pollution Contingency Plan |
| NOAEL | No Observed Adverse Effect Level |
| NPL | National Priorities List |
| NREPA | Michigan Natural Resources and Environmental Protection Act |
| NRT | Natural Resource Trustees |
| OU | operable unit |
| PCB | polychlorinated biphenyl |
| PRPs | potentially responsible parties |
| QAPP | quality assurance project plan |
| RD/RA | remedial design/remedial action |
| RI | remedial investigation |
| RI/FFS | remedial investigation/focused feasibility study |
| ROD | Record of Decision |
| RRO | remedial response objective |
| SARA | Superfund Amendments and Reauthorization Act |
| SVOC | Semi-Volatile Organic Compound |
| TBC | to be considered |
| U.S. EPA | United States Environmental Protection Agency |
| VOC | Volatile Organic Compound |

PART I: DECLARATION

1.1 Site Name and Location

Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site
Willow Boulevard/A-Site Landfill, Operable Unit 2
CERCLIS ID: MID006007306
Business I-94 and Highway M-96 (King Highway)
Kalamazoo Township, Michigan 49048

1.2 Statement of Basis and Purpose

This decision document presents the selected remedy for the Willow Boulevard/A-Site Landfill Operable Unit (OU2) located in Kalamazoo Township, Michigan. OU2 is one of four landfills associated with the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (Site). The remedy for OU2 was chosen in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and, to the extent practicable, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This decision is based on the Administrative Record file for OU2.

The State of Michigan, acting through the Michigan Department of Environmental Quality (MDEQ), concurs with the selected remedy.

1.3 Assessment of the Site

The response action selected in this Record of Decision (ROD) is necessary to protect the public health or welfare or the environment from actual or threatened releases of hazardous substances into the environment.

1.4 Description of the Selected Remedy

The remedial action for OU2 addresses papermaking residual, soil, and sediment contaminated with polychlorinated biphenyls (PCBs). To eliminate the risk associated with exposure to PCBs, contaminated residual, soil, and sediment (herein referred to as "PCB-contaminated material") will be excavated from areas located outside the OU2 landfill boundary, consolidated with existing A-Site residuals, and contained under an engineered cover (cap). The sheet pile wall at the A-Site Landfill will remain in place. At the Willow Boulevard Landfill, the north side of the landfill will be excavated to create a "setback" from the Kalamazoo River. The excavated area will be backfilled with clean soil (augmented with organic substrate and plant materials) to create a new ecologically friendly dike. The dike will physically separate the landfill from the Kalamazoo River, thereby reducing the potential for PCB migration (via erosion or surface water runoff) into the river. Following dike construction, a cap will be constructed over the Willow Boulevard and the A-Site Landfills. Isolation and containment of residuals under a landfill cap

will eliminate the risk to human health and ecological receptors by removing the potential for exposure to PCBs and, reduce potential PCB migration (via erosion or surface water runoff) into adjacent areas and the Kalamazoo River. Institutional controls will be implemented to restrict public access, thereby eliminating the risk to humans by preventing exposure to contaminated residuals. Institutional controls will consist of a perimeter fence enclosing both landfills and deed restrictions limiting future land use as industrial and/or commercial. Long-term maintenance and groundwater monitoring will also be conducted to ensure the integrity and effectiveness of the landfill containment system. There is no evidence of principal threat wastes at OU2, as current monitoring data does not indicate that there is source material in the soil or groundwater.

The major components of the selected remedy for OU2 include:

- Excavation of approximately 13,800 cubic yards (cyd³) of PCB-contaminated material from areas adjacent to the Willow Boulevard and A-Site Landfills, including the Area South of the A-Site Berm, the Area East of Davis Creek, the AMW-3A area, and the Willow Boulevard Drainageway, and consolidation of that material back into the A-Site Landfill.
- Creation of a setback from the Kalamazoo River at the Willow Boulevard Landfill by excavating the northern banks of the landfill along the river, and then backfilling the excavated area with clean soil (augmented with organic substrate and plant materials) to create a new ecologically friendly dike. The setback shall be of sufficient distance to ensure that no hydraulic connection exists between the contaminated residuals within the landfill and the Kalamazoo River;
- Implementation of bank stabilization and erosion control measures to protect against bank and/or dike failure and subsequent migration of PCBs into the Kalamazoo River. In places at the A-Site Landfill where there is no sheet pile, the existing dike soils will be re-graded to achieve a gentler, stable slope, and a zone of rip-rap will be placed at the toe of the dike to prevent erosion. In places at the Willow Boulevard Landfill where no adequate dikes exist, an earthen berm will be constructed to provide a physical separation between the landfill and adjacent residences. Areas of the berm that are subject to erosion will be protected using techniques including, but not limited to, articulated concrete systems, geoweb materials, or revetment blankets;
- Construction of a cap over both the Willow Boulevard and A-Site Landfills. The cap will minimize infiltration of precipitation through the landfill, prevent potential migration of PCBs (via erosion or surface water runoff) into the Kalamazoo River, and eliminate exposure to PCB-contaminated materials. The cap shall be designed to meet the State of Michigan's solid waste landfill closure regulations pursuant to Part 115, Solid Waste Management, of the Michigan Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended;

- Long-term maintenance of the components of the remedy including the inspection (and repair, if needed) of the A-Site sheet pile wall, landfill cap, bank stabilization, and erosion control measures.
- Long-term monitoring of groundwater to ensure the integrity and effectiveness of the landfill containment system; and,
- Implementation of institutional controls to prevent exposure to PCB-contaminated material. Institutional controls will consist of access restrictions (perimeter fence with posted warning signs) and deed restrictions limiting future land use to industrial/commercial.

Other Actions Recognized Under this ROD:

- Disposal of an additional 35,000 cyd³ (approximate volume) of PCB-contaminated material into the A-Site Landfill. This material will be excavated from areas located at the Georgia-Pacific Kalamazoo Mill and the former Hawthorne Mill property, which is another operable unit associated with the Site. Excavation and transportation of contaminated materials will be conducted pursuant to a separate U.S. EPA removal action, and not as part of this ROD. The removal action, and subsequent disposal of PCB-contaminated material at the A-Site Landfill, will only occur if an Administrative Order on Consent (AOC) is successfully negotiated between U.S. EPA and Georgia-Pacific Corporation. The removal action will occur in a timeframe that will not delay implementation of this ROD.

U.S. EPA believes the remedial actions identified in this ROD, if properly implemented, will protect human health and the environment.

1.5 Statutory Determinations

The selected remedy is consistent with CERCLA, and to the extent practicable, the NCP. The selected remedy is protective of human health and the environment, complies with federal and state requirements that are applicable or relevant and appropriate to the remedial action (unless justified by a waiver), and is cost-effective. The remedy does not meet the statutory preference for treatment; however, no source material constituting principal threat wastes are present onsite. PCB-contaminated material that is present is relatively immobile and of low to moderate toxicity; and therefore, it does not constitute a principal threat waste. Because there are no principle threat wastes present at OU2, treatment is not required; rather, the NCP requires engineering controls, such as containment, for wastes that pose a relatively low long-term threat. To satisfy this requirement, PCB-contaminated material at OU2 will be physically isolated and contained under a landfill cap, and these measures will greatly reduce the mobility of the contaminated materials.

The PCB Remediation Waste Rule, 40 C.F.R. § 761.61 *et seq.*, under the Toxic Substances and Control Act (TSCA) applies to the selected remedy because some of the onsite PCB-contaminated material and material from the former paper mill properties (the Kalamazoo and Hawthorne Mills) have PCB concentrations greater than 50 mg/kg and will be disposed of at the A-Site Landfill. The Director of the Superfund Division, U.S. EPA Region 5, in consultation with TSCA, has determined that disposal of remediation waste at the A-Site Landfill will not pose an unreasonable risk of injury to human health or the environment. Through signature of this ROD, the Director of the Superfund Division, U.S. EPA Region 5, approves the risk-based disposal of PCB-contaminated material into the A-Site Landfill portion of OU2.

Because the selected remedy will result in hazardous substances, pollutants, or contaminants remaining onsite above levels that allow for unlimited use and unrestricted exposure, a statutory review will be conducted within five-years after initiation of remedial action to ensure that the remedy is, or will be, protective of human health and the environment.

1.6 ROD Data Certification Checklist

The following information is included in the Decision Summary section of this ROD. Additional information is in the Administrative Record file for OU2.

- Contaminants of concern and their respective concentrations (Section 5.5 and 5.6, pg. 14);
- Qualitative evaluation of potential risk for contaminant of concern (Section 7.2, pg. 21);
- Cleanup levels for the contaminant of concern and basis for levels (Section 7.0, pg. 20);
- Principal threat wastes (Section 11.0, pg. 39);
- Current and reasonably anticipated future land use assumptions used in the qualitative risk assessment and ROD (Section 6.0, pg. 19);
- Potential land use that will be available at OU2 as a result of the selected remedy (Section 12.4, pg. 42)
- Estimated total present worth costs, discount rate, and the number of years over which the remedy cost estimates are projected (Section 12.3, pg. 42); and
- Key factors that led to selecting the remedy (Section 12.1, pg. 40)

1.7 Authorizing Signature

The State of Michigan concurs with the selected remedy. The State of Michigan's concurrence letter is included in the Administrative Record for OU2.



Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency, Region 5

9-27-06

Date

PART II: DECISION SUMMARY

1.0 Site Name, Location, and Description

The Willow Boulevard/A-Site Landfill Operable Unit (OU2) is located southeast of the intersection of Business I-94 and Highway M-96 (King Highway) in Kalamazoo Township, Michigan. OU2 is bordered by the Kalamazoo River to the north and northwest, Davis Creek to the east, and Willow Boulevard Road, former Olmstead Creek, and residential areas to the south (Figures 1 and 2).

OU2 consists of two disposal areas, the Willow Boulevard Landfill (including the Drainageway area) and the A-Site Landfill. The Willow Boulevard Landfill occupies an approximate 11-acre area and the A-Site Landfill, an approximate 22-acre area. A fence exists around the southern and eastern boundary of the landfill. OU2 also includes nearby impacted areas identified in numbers (3) through (5) in the list below. Residential properties south of the Willow Boulevard and A-Site Landfills do not contain PCBs at concentrations that pose a health risk to residents and are, therefore, not part of this Record of Decision (ROD).

OU2 areas addressed in this ROD include:

- (1) the Willow Boulevard Landfill and Drainageway area;
- (2) the A-Site Landfill;
- (3) the Area East of Davis Creek;
- (4) the Area South of the A-Site berm; and,
- (5) the area near monitoring well AMW-3A.

OU2 is one of four landfills associated with the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (Site) (Figure 3). The three other landfills include the Allied Paper, Inc., Landfill (OU1), the King Highway Landfill (OU3), and the 12th Street Landfill (OU4). The Site also includes 80-miles of the Kalamazoo River and a 3-mile stretch of Portage Creek (OU5); the Georgia-Pacific Kalamazoo Mill and former Hawthorne Mill properties (OU6) located in Kalamazoo, Michigan; and the Plainwell Mill property (OU7) located in Plainwell, Michigan. All operable units are in various stages of cleanup under the federal Superfund program.

The Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) Identification Number for the Site is MID006007306. The State of Michigan (State) was designated as the enforcement lead agency in 1990 when the Site was listed on the National Priorities List. In February 2002, U.S. EPA assumed the enforcement lead for the entire Site, with the exception of King Highway Landfill. The State will retain the enforcement lead for the King Highway Landfill. The Remedial Investigation (RI) Report for the Allied Paper, Inc., Landfill is still in draft form. After the report is finalized, U.S. EPA will draft the Feasibility Study Report for OU1.

2.0 Site History and Enforcement Activities

The Willow Boulevard and the A-Site Landfills were used to dispose of dewatered papermaking residuals from the former Allied Paper King Mill and the Georgia-Pacific Kalamazoo Mill. Figure 4 shows an aerial view of the landfills in April 2001. Both mills are located in Kalamazoo, Michigan. The paper residual consisted mostly of water, wood fiber, and clay, and PCBs were introduced into the waste stream between the 1950s and 1970s. During this time, the paper mills were recycling office wastepaper, some of which contained carbonless copy paper contaminated with PCBs. Process residuals from the recycling operations were then disposed of at the Willow Boulevard and at the A-Site Landfills. Over time, the contaminated residuals migrated, via erosion or surface water runoff, from the landfill into adjacent areas and/or the Kalamazoo River. Summarized below is a description of the operating history of each landfill.

The A-Site was originally a series of dewatering (or drainage) lagoons. Paper waste from the King Mill was piped to the A-Site lagoons, and water was allowed to settle out. Paper residuals accumulated within the lagoons, and over time, the A-Site became known as the A-Site Landfill. The A-Site lagoons were active between 1960 and 1967. Operations at the King Mill ended in 1971, and the mill was razed in 1978. Georgia-Pacific purchased the A-Site in 1975 and used it to dispose of paper waste dug up from the King Highway dewatering lagoons until 1977. The King Highway dewatering lagoons were located at the Georgia-Pacific Kalamazoo Mill property, just north of OU2 across the Kalamazoo River. From 1977 to 1987, the A-Site received dewatered papermaking waste from the Kalamazoo Mill filter presses. The A-Site ceased to be an active disposal area in 1987, when the King Highway Landfill operations began. In late 1998, a sheet pile wall was installed at the A-Site Landfill along the length of the Kalamazoo River, extending about 150 feet up Davis Creek. This wall extends 2 feet above the 100-year flood elevation. The purpose of the sheet pile was to reduce the potential for residuals to be transported into the river in the event of failure of the existing dikes.

The Willow Boulevard Landfill was acquired by Georgia-Pacific from the Kalamazoo Paper Company in 1967. From mid-1960 until 1975, dewatered paper residuals were disposed of at the Willow Boulevard Landfill. The Willow Boulevard Landfill, which was built without berms, also received dewatered residuals from the King Highway lagoons. Disposal activities occurred from the mid 1960's until operations stopped in 1975. The paper waste from the Kalamazoo Mill contained clay, paper fibers and PCBs. In April 1999, Georgia-Pacific began implementation of an interim response program at the Willow Boulevard Landfill. Interim response activities include the excavation of residual areas along the western bank of the river adjacent to the landfill and placing the material in the eastern portion of the landfill; re-grading the landfill to promote proper drainage; and placing a 6-inch layer of clean sand on top of the landfill. A portion of the river edge was backfilled to create a sand berm along the Kalamazoo River. Geotextile and riprap were placed along the river's edge to reduce erosion.

OU2 was placed on the National Priorities List (NPL) in 1990. In 1990, the State entered into an Administrative Order on Consent (AOC) with HM Holdings, Inc., Georgia-Pacific Corporation, and the Simpson Plainwell Paper Company (no longer a potential responsible party (PRP) at the

Site due to bankruptcy). In accordance with the AOC, the PRPs developed the remedial investigation/focused feasibility study (RI/FFS) report for OU2. In 2001, the State rejected the PRP's RI/FFS and took over the completion of the report. The State completed the OU2 RI and FFS reports in November 2004. The State also conducted the human health and ecological risk assessments, and published the reports in April 2003. U.S. EPA officially acquired the enforcement lead of OU2 upon the Michigan Department of Environmental Quality's (MDEQ) completion of the RI/FFS. Georgia-Pacific Corporation, under a federal consent decree, will carry out the design and implementation of the remedy selected in this ROD.

3.0 Community Participation

The RI/FFS and Proposed Plan for OU2 were made available to the public on July 15, 2005. Copies of the Proposed Plan were mailed to all interested persons on the U.S. EPA community involvement mailing list for OU2. Copies of all documents supporting the selected remedy outlined in the Proposed Plan are in the Administrative Record file for OU2, located at the U.S. EPA Records Center, 77 West Jackson Boulevard, Chicago, Illinois. Copies of all supporting documents were also placed in the Information Repositories at the Kalamazoo Public Library, Western Michigan's Waldo Library, and at the libraries in Plainwell, Otsego, Allegan, and Douglas, Michigan. The notice of the availability of these documents and the date of the public meeting was published in the Kalamazoo Gazette on July 26, 2005. The public comment period began on July 15, 2005, and concluded on August 15, 2005. The public meeting was held at the Kalamazoo Public Library on August 3, 2005. A request to extend the comment period was made during the public meeting. The comment period was extended to September 16, 2005. A notice of the extension was published in the Kalamazoo Gazette on August 14, 2005, and in the Allegan County News on August 18, 2005. Responses to comments received during the public comment period and at the public meeting are included in the Responsiveness Summary, in Part III of this ROD.

4.0 Scope and Role of Response Action

Operable Unit 2 is part of an overall cleanup of the Site that includes seven identified OUs. The cleanup status of each OU is summarized in Table 1 below.

Table 1 - Cleanup Status of OUs at the Allied Paper Inc/Portage Creek/Superfund Site

| Operable Unit | Name | Cleanup Status |
|---------------|----------------------------------|--|
| OU1 | Allied Paper, Inc. Landfill | The Remedial Investigation Report is still in draft form. After the report is finalized, U.S. EPA will draft the Feasibility Study Report. |
| OU2 | Willow Boulevard/A-Site Landfill | Subject of this ROD |

| | | |
|-----|---|--|
| OU3 | King Highway Landfill | ROD signed in February 1998. MDEQ will retain the lead on oversight of operation and maintenance activities. |
| OU4 | 12 th Street Landfill | ROD signed in September 2001. EPA is overseeing the remedial design phase of the remedy, which is now underway. |
| OU5 | 80-miles of the Kalamazoo River & a 3-mile stretch of Portage Creek | U.S. EPA, MDEQ, the PRPs, and the Natural Resource Trustees are engaged in mediated negotiations. |
| OU6 | Georgia-Pacific Kalamazoo Mill and former Hawthorne Mill Properties | U.S. EPA is preparing the legal documentation for a Time-Critical Removal Action at OU6. Under this action, approximately 35,000 cyd3 of PCB-contaminated materials will be excavated from the former mill properties and disposed of at the A-Site Landfill portion of OU2. |
| OU7 | Plainwell Mill Property | U.S. EPA will oversee the Remedial Investigation/Feasibility Study, expected to begin in the Fall of 2006. |

The overall cleanup strategy for the Site is to eliminate on-going sources of PCBs into the Kalamazoo River, and to reduce or eliminate the risk to human health and the ecological receptors from exposure to PCBs via dermal contact, ingestion, and inhalation of airborne PCB-contaminated material, and through the consumption of Kalamazoo River fish. The ROD for OU2 will be consistent with the final remedy for the overall Site.

OU2 is being addressed under the framework set forth in CERCLA. The selected remedy for OU2 addresses papermaking residual, soil, and sediment contaminated with PCBs, and it will reduce or eliminate the risk to human health and ecological receptors by removing potential exposure to PCB-contaminated material by removing, consolidating, and containing contaminated materials under a landfill cap. The selected remedy will also eliminate potential migration of PCBs from the landfills and adjacent areas (via erosion or surface water runoff) into the Kalamazoo River, thereby eliminating potential risks to fish-eating consumers (people or mink).

5.0 Site Characteristics

5.1 Conceptual Site Model

The conceptual site model (CSM) provides an understanding of OU2 based on the sources of the contaminants of concern, potential transport pathways, and environmental receptors. Based on the nature and extent of the contamination and the fate and transport mechanisms described in the RI Report, the CSM for OU2 includes the following components:

- PCBs are the primary contaminants of concern. PCBs entered the waste stream when the former King Mill and Kalamazoo Mill recycled office waste paper, some of which contained carbonless copy paper contaminated with PCBs;
- PCB-contaminated residual is present in surface and/or subsurface soil at the landfills and adjacent areas. At the landfills and the adjacent areas, the pathway of concern is via dermal contact with exposed residuals and the transport of contaminated material into the Kalamazoo River via erosion or by surface water runoff;
- PCB transport within air, during the RI and interim response action activities, did not represent a significant pathway based on the results of air monitoring conducted;
- Primary PCB transport mechanism at the Willow Boulevard Landfill is via erosion of residuals from the landfill and/or surface water runoff of soil and sediment from adjacent areas into the Kalamazoo River. At the A-Site Landfill, PCB transport into the Kalamazoo River is limited due to the presence of the existing sheet pile wall and the perimeter dike. PCB transport (via erosion and surface water runoff) at the A-Site Landfill is primarily associated with areas located outside the sheet pile wall and perimeter dike such as the Area South of the A-Site Berm. Migration of PCBs into the Kalamazoo River is a pathway of concern for humans and aquatic ecological receptors, such as mink, that uptake PCBs through the consumption of fish;
- Fate and transport of PCBs within the landfills is limited due to the low permeability of the residual waste material; however, native soils surrounding residual waste material are permeable and may provide a pathway to the Kalamazoo River;
- Suspension and migration of PCBs may be associated with surface water flow in Davis Creek and the Kalamazoo River;
- During the RI, PCBs were detected in one (WMW-3A) of the five groundwater monitoring wells sampled at the Willow Boulevard Landfill. However, it was later determined that past detections of PCBs at WMW-3A may be an artifact of well construction. During the RI, no PCBs were detected in groundwater samples collected at the A-Site Landfill in 1993 and 1995. However, PCBs were detected in leachate wells that were installed within a perched saturated zone at the A-Site Landfill. PCBs

were also detected in groundwater samples collected from the A-Site Landfill in November and December 2000; and,

- Although several metals were detected in groundwater at OU2, none were detected above their respective State Groundwater Surface Water Interface (GSI) value with the exception of barium and mercury.

5.2 Site Overview

OU2 is approximately a 32-acre site that consists of two disposal areas and nearby impacted areas. The A-Site Landfill occupies an approximate 11-acre area while the Willow Boulevard Landfill (including the Drainageway), occupies approximately 22-acres. The acreage of the nearby impacted areas is summarized in Table 4. Georgia-Pacific owns the Willow Boulevard Landfill and Drainageway area, the A-Site Landfill, the Area South of the A-Site Berm (including former Olmstead Creek), and the Area East of Davis Creek. The Kalamazoo Township owns the area near monitoring well AMW-3A. The Willow Boulevard and A-Site Landfills are bordered by the Kalamazoo River to the north and northwest, Davis Creek to the east, and Willow Boulevard Road, former Olmstead Creek, and residential homes to the south.

OU2 lies within the Galesburg-Vicksburg Outwash Plain. The regional geology in the vicinity of OU2 consists of unconsolidated glacial deposits overlying consolidated bedrock formations. The generalized OU2 geology consists of the following, starting at ground surface: layer of residuals; discontinuous organic-rich peat unit; a fine to coarse sand and/or fine sandy permeable glacial outwash materials; and shale bedrock. Groundwater within the Kalamazoo River Basin flows from topographic high areas to lowland discharge areas. High water tables or levels occur in spring and low groundwater levels occur in the summer.

No private, commercial, or industrial water wells were identified within 1/4-mile of OU2. Ten wells were identified within 1/2-mile of OU2. Six of the ten wells are located north of OU2, across the Kalamazoo River. Four of the six wells are public water supply wells owned by the City of Kalamazoo. Of the remaining two of the six wells, one is an industrial well and the other is a domestic well. The four remaining wells, of the original ten identified, are located to the south and east of OU2. Of the four wells, three are domestic wells. The type of usage for the last remaining well is unknown since no reported usage could be found in any of the available well records. It is not known whether any of the domestic wells within 1/2-mile of OU2 are being used for drinking water. Figure 5 depicts water well locations within a 1/4-mile and 1/2-mile of OU2.

Land use in the vicinity of OU2 includes industrial, commercial, and residential property. OU2 is currently an inactive disposal area. The A-Site Landfill area is zoned for industrial use. The Willow Boulevard Landfill area has never been zoned because the Willow Boulevard Landfill did not exist at the time the A-Site Landfill area was zoned. The land south of OU2 is zoned residential.

Wetlands are present along OU2 and have been identified in *Technical Memorandum 9* (BBL, 1995b). Several types of wetlands were identified and classified as palustrine unconsolidated bottom semi-permanently flooded, palustrine deciduous forest subject to seasonal flooding, and palustrine emergent semi-permanently flooded. OU2 provides “moderate quality” habitat for terrestrial wildlife. There is “high quality” habitat adjacent to OU2.

5.3 Sampling Strategy

The PRP conducted pre-RI sampling and later conducted additional extensive OU2 investigations as part of the remedial investigation work. The purpose of the pre-RI sampling was to identify specific areas to target for investigation during the RI. Pre-RI samples were collected with oversight of the Michigan Department of Natural Resources (MDNR). Pre-RI investigations between 1986 and 1990 include:

- Surficial Residuals and Soils Investigation;
- Subsurface Residuals and Soils Investigation;
- Groundwater Investigation; and,
- Air Investigation.

Pre-RI investigation activities are described in detail in the *July 1992, Description of Current Situation Report* prepared by Blasland, Bouck & Lee, Inc (BB&L). Table 2, below, summarizes the areas sampled, the media investigated, and the analytical parameters used during the pre-RI.

Table 2 - Pre-RI Areas Sampled, Media Investigated, and Analytical Parameters

| Areas Sampled | Media Investigated | Analytical Parameters |
|---|---|-----------------------|
| Willow Boulevard Landfill | Surface Residual & Subsurface Residual | PCBs |
| | Groundwater | PCBs and dioxin |
| A-Site Landfill | Surface Soil, Subsurface Soil & Groundwater | PCBs |
| Area East of Davis Creek | Surficial Residual | PCBs |
| Davis Creek | Surface Water | PCBs |
| former Olmstead Creek | Surface Water | PCBs |
| Residential Property South of Willow Boulevard Landfill | Surface Soil | PCBs |

Because the quality of the historical pre-RI data could not be verified through a Quality Assurance/Quality Control (QA/QC) review, pre-RI sampling data cannot be used for decision-making purposes.

The purpose of the RI sampling was to characterize areas that were sampled during the pre-RI and to investigate new areas. New areas investigated during the RI include residential properties south of the A-Site Landfill and the area near monitoring well AMW-3A. During the RI, samples were collected from 97 soil borings and 28 groundwater monitoring wells. Air samples were collected from one perimeter and two background air samplers. Additionally, 16 sediment cores and 8 surface water samples were collected from Davis Creek, the former Olmstead Creek, and the Kalamazoo River. RI samples were collected with oversight of the MDEQ. RI investigations between 1993 and 2000 include:

- Residual characterization;
- Hydrogeological investigation;
- Soil and sediment investigation;
- Geotechnical investigation;
- Surface water investigation;
- Air investigation; and,
- a Wetlands assessment.

RI investigations were conducted in accordance with the following documents:

- MDEQ-approved *Work Plan* authored by Blasland & Bouck Engineers, PC (BBEPC, 1993b);
- *Work Plan Addendum* (BBL, 1995c);
- *Field Sampling Plan* (BBEPC, 1993c);
- *Quality Assurance Project Plan* (BBEPC, 1993d); and,
- Plans for additional sampling of the AMW-3A area and the Willow Drainageway area, and a residential soil sampling plan (Brown, 1998a; Brown 1998b; McGuire, 1998a; McGuire, 1998b; McGuire, 1999).

Table 3, below, summarizes the areas sampled during the RI, the media investigated, and the chemicals analyzed.

Table 3 - RI Areas Sampled, Media Investigated, and Analytical Parameters

| Areas Sampled | Media Investigated | Analytical Parameters |
|-----------------------------------|--------------------------|--|
| Willow Boulevard Landfill | Surface Residual | PCBs and dioxins |
| | Subsurface Residual | PCBs, VOCs, SVOCs, pesticides and metals |
| | Groundwater | PCBs, VOCs, SVOCs, pesticides and metals |
| Willow Boulevard Drainageway Area | Subsurface Soil/Sediment | PCBs |

| | | |
|---|------------------------------------|--|
| A-Site Landfill | Surface Residual | PCBs and dioxins |
| | Subsurface Residual | PCBs, VOCs, SVOCs, pesticides and metals |
| | Groundwater | PCBs, VOCs, SVOCs, pesticides and metals |
| North of A-Site Landfill in the Kalamazoo River | Sediment | PCBs |
| Area South of A-Site Berm | Surface Soil | PCBs |
| | Subsurface Soil | PCBs and dioxin |
| Davis Creek | Surface Water and Sediment Samples | PCBs |
| Former Olmstead Creek | Surface Water | PCBs |
| Area East of Davis Creek | Surficial Residual | PCBs |
| Area Near Monitoring Well AMW-3A | Surface & Subsurface Soil | PCBs |
| Residential Property South of Willow Boulevard Landfill | Surface Soil | PCBs |
| Residential Property South of the A-Site Landfill | Surface and Subsurface Soil | PCBs |

Between November 1999 and April 2000, Georgia-Pacific voluntarily conducted interim response actions (IRAs) at both landfills in accordance with the *Residual Removal Work Plan* outlined in a letter to MDEQ (McGuire, 1999). The purpose of the IRAs was to remove PCB-contaminated residuals that had eroded from the landfills and deposited into the Kalamazoo River, and to prevent future erosion and mobilization of residuals into the River. At the Willow Boulevard Landfill, residuals were excavated from the river and relocated back into the landfill. Confirmatory samples were collected prior to backfilling the excavation area with clean sand. A temporary berm was also constructed along edge of the river and a 6-inch sand layer was placed over the landfill. Erosion control measures (riprap and geotextile) were installed. Burrowing animals and erosion continue to diminish the effectiveness of the IRA. In areas where the sand layer/geotextile is disturbed, residuals are visibly eroding into the Kalamazoo River. At the A-Site Landfill, residuals from the confluence of the former Olmstead Creek and the Kalamazoo River were excavated, confirmatory samples collected, and the area backfilled with clean material. Approximately 7,000 cyd³ of PCB-contaminated sediment was removed during this IRA. Confirmatory sampling results are summarized in Section 5.6 of this ROD. Any PCB-containing material remaining in the Kalamazoo River will be addressed as part of the ROD for OU5.

5.4 Source of Contamination

As discussed in Section 2.0 of this ROD, PCB-contaminated paper residuals at OU2 originated at the former Allied Paper King Mill and the Georgia-Pacific Kalamazoo Mill. These mills recycled office waste paper, some of which contained PCB-containing carbonless copy paper. The processed residuals, from the recycling operations, were then disposed of at the Willow Boulevard and the A-Site Landfills. Over time, PCB-contaminated residuals from the landfills eroded and migrated into the soil and sediment of adjacent areas and/or into the Kalamazoo River. Surface water runoff from the landfills and possibly adjacent areas may also transport PCBs directly into the Kalamazoo River. Therefore, the landfills and adjacent areas may be sources of PCBs to the Kalamazoo River and Davis Creek, which empties into the Kalamazoo River.

5.5 Types of Contaminants and Affected Media

PCBs are the primary contaminant of concern at OU2. The media of concern are PCB-contaminated residuals within the Willow Boulevard and A-Site Landfills and PCB-contaminated residual, soil, and/or sediment in areas adjacent to the landfills including the Willow Drainageway, the Area South of the A-Site Berm, the Area East of Davis Creek, and the area near monitoring well AMW-3A. Groundwater has not been fully investigated, but groundwater quality results obtained thus far have shown detectable concentrations of PCBs and metals in groundwater. PCBs are the primary risk driver at OU2. U.S. EPA classifies PCBs as a probable human carcinogen.

5.6 Extent of Contamination

This section briefly describes pre-RI and RI sampling activities and results conducted at OU2. Figure 6 depicts pre-RI sample locations, and Figures 7 through 10 depict supplemental RI sample locations and results. A full description of the pre-RI investigation and sampling results are contained in the July 1992 *Description of Current Situation* report prepared by BB&L. A full description of RI investigations and sampling results are included in the November 2004 *Remedial Investigation Report*, which was prepared by the MDEQ. Both reports are included in the Administrative Record for OU2.

Volume Estimates

During the RI and supplemental investigations, samples were collected from soil borings to characterize the vertical and horizontal extent of the PCB-contaminated material that is present within the landfills and adjacent areas. Field observations of gray clay material and analytical data were used to estimate the volume of PCB-contaminated material. Volumes were calculated based on PCB concentrations in residual waste material exceeding the laboratory detection limit for PCBs of 0.33 mg/kg. Estimated volume of PCB-contaminated material at OU2 is summarized in Table 4, below. Actual removal volume may vary depending on the cleanup level that is appropriate for those areas.

Table 4 – Estimated Volume of PCB-Contaminated Material at OU2

| Areas | Size | Maximum Depth | Estimated Volume (cyd³) |
|---|--------------------------------|--------------------------|---|
| Willow Boulevard Landfill (& Willow Drainageway) | 11 Acres | 24 ft (residual) | 152,100 |
| A-Site Landfill | 22 Acres | 29 ft (residual) | 475,400 |
| East of Davis Creek | 3.5 Acres | < 1 ft (residual) | 3,800 |
| South of A-Site Berm (includes former Olmstead Creek) | 2.5 Acres | 6 ft (soil and sediment) | 2,900 |
| AMW-3A Area | 0.25 Acres (Not Fully Defined) | 1 ft (soil) | 100 |

Willow Boulevard Landfill**Pre-RI Sampling**

Pre-RI samples collected by the Michigan Department of Natural Resources (MDNR) in 1986 reported total PCB concentrations of 44 mg/kg and 47 mg/kg in two surficial soil samples (0 to 2 feet below ground surface (bgs)). Pre-RI surficial samples collected by Georgia-Pacific in 1987 and 1988 reported total PCB concentrations ranging from non-detect to 330 mg/kg. Subsurface sampling (greater than 2 ft bgs) conducted by MDNR and Georgia-Pacific in 1987 and 1988 ranged from non-detect to 160 mg/kg PCB, and having an average of approximately 65 mg/kg PCB. Groundwater sampling of three wells in February and March 1988 had total PCB concentrations ranging from non-detect to 1.4 ug/L, with an average concentration of 0.28 ug/L. In June 1990, groundwater sampling of the same three wells were analyzed for PCDD and PCDF homologues and 2,3,7,8-congeners. At one well, the total PCDF result was 0.00002 ug/L; the remainder of the samples resulted in non-detect or returned results in test blanks, as well as sample media.

RI Sampling

During the RI, PCBs were detected in 8 of 9 surface soil samples, ranging from non-detect to a maximum concentration of 270 mg/kg, with an average of 68 mg/kg. These samples were collected prior to the installation of the temporary sand cover. However, Photograph 1, taken by the MDEQ, shows a large tear in the geofabric and gray paper residuals visibly eroding into the Kalamazoo River. Sampling of subsurface residuals showed PCBs detected in 38 of the 42 samples, ranging from non-detect to a maximum concentration of 160 mg/kg (4 to 6 ft bgs), with an average concentration of 34 mg/kg. Of the 15 subsurface samples analyzed, none of the samples exceeds regulatory criteria for Volatile Organic Compounds (VOCs), Semi Volatile Organic Compounds (SVOCs), or pesticides. Five metals (mercury, cyanide, manganese, zinc,

and lead) were detected in subsurface soil exceeding the State of Michigan industrial/commercial criteria for the protection of groundwater. Of the three surface soil samples collected for dioxin analysis, none of the samples exceeds any applicable regulatory cleanup criteria. Sample results for dioxins ranged from 0.000002 mg/kg to 0.0008 mg/kg, which is below applicable regulatory cleanup criteria. In October 1993 and August 1995, groundwater samples were collected from monitoring well WMW-3A and analyzed for PCBs. PCBs were detected above the method detection limit in one of five groundwater samples in October 1993 and in one groundwater sample collected in August 1995. The PRP suspected that PCBs detected in the groundwater samples could be attributable to artifacts of well installation. To test this hypothesis, in August 1996, a double-cased replacement well was installed in close proximity to WMW-3A. The new replacement well (WMW-3AR) was sampled twice (August 1996 and November 2000) and no PCBs were detected above method reporting limits. These results support the hypotheses that past detections of PCBs at monitoring well WMW-3A may be an artifact of well construction.

Interim Removal Action

Twenty-one confirmatory sediment samples were collected from the Kalamazoo River, adjacent to the Willow Boulevard Landfill, and analyzed for PCBs. Samples collected by the PRP ranged from non-detect (at the surface) to 0.73 mg/kg (at base of excavation). Samples collected by MDEQ ranged from 0.05 mg/kg (surface) to 2.7 mg/kg (at base of excavation). As discussed in Section 5.3 of this ROD, any PCB-containing material remaining in the Kalamazoo River will be addressed as part of the remedy for OU5.

Willow Drainageway:

No pre-RI samples were collected; only subsurface samples were collected during the RI. Subsurface PCB concentrations ranged from not detected to 30 mg/kg (6.5 - 7.0 ft bgs).

A-Site Landfill:

Pre-RI sampling

Pre-RI surficial residual samples were collected in April 1987. PCB concentrations in surface residuals (at the east end of the A-Site) ranged from non-detect to 2 mg/kg. PCB concentrations in subsurface residuals ranged from non-detect to 15 mg/kg (24 to 26 ft bgs).

RI sampling

PCB concentrations in surficial residuals ranged from non-detect to 0.12 mg/kg. However, Photograph 2, taken by the MDEQ, shows paper residuals exposed at the surface of the landfill. PCB concentrations in subsurface samples ranged from non-detect to 330 mg/kg (22 to 24 ft bgs). None of the 17 subsurface samples analyzed for VOCs, SVOCs, or pesticides exceed any regulatory cleanup criteria. Of the 17 samples analyzed for metals, only mercury was detected at concentrations exceeding State criteria for the protection of groundwater. Eight sediment samples were also collected on the north side of the A-Site Landfill outside the sheet pile wall. PCB concentrations in these samples ranged from non-detect to 0.14 mg/kg. PCBs were not detected in groundwater samples collected at the A-Site Landfill in October 1993 and in August 1995. However, PCBs were detected in leachate wells that were installed within a perched

saturated zone. PCB concentrations ranged from non-detect to an estimated 0.18 ug/L in groundwater samples collected from the A-Site Landfill in November and December 2000.

Interim Removal Action

Confirmatory sediment samples were collected from the Kalamazoo River at the confluence of Olmstead Creek and the River. Samples collected by the PRP ranged from non-detect to 0.75 mg/kg PCB. Confirmatory samples collected by MDEQ ranged from non-detect to 14 mg/kg PCB. As discussed in Section 5.3 of this ROD, any PCB-containing material remaining in the Kalamazoo River will be addressed as part of the remedy for OU5.

Area South of the A-Site Berm:

No pre-RI samples were collected. PCB concentrations in three surface samples ranged from non-detect to 0.77 mg/kg. An additional surficial sample was collected in a subsequent round of sampling. PCB concentration in this sample was 14 mg/kg. Of the 9 subsurface samples collected, 9 had PCB concentrations ranging from 0.36 to 37 mg/kg (4 to 4.8 ft bgs). All other samples were reported as non-detect.

Davis Creek:

During the pre-RI, one split sample of surface water was collected, and during the RI, three sediment samples were collected. No PCBs were detected in the surface water sample collected by the MDNR in April 1987. PCB concentrations in sediment samples ranged from 0.054 mg/kg to 0.12 mg/kg.

Former Olmstead Creek:

During the pre-RI, three sediment samples were collected; during the RI, three surface water samples were collected. Three sediment samples collected had PCB concentrations of 9.94 mg/kg, 0.31 mg/kg (7.6 mg/kg in a duplicate sample), and 1.5 mg/kg. The sample location (OCD-SED) which had the PCB concentration of 9.94 mg/kg was removed during the IRA discussed in Section 5.3 of this ROD. No PCBs were detected in any of the surface water samples.

Area East of Davis Creek:

During the pre-RI, 11 surficial residual samples were collected and during the RI, an additional 8 surficial samples were collected. Pre-RI concentrations in surficial residuals ranged from non-detect to 5 mg/kg PCB. One triplicate sample, collected by the MDNR, had a concentration of 80 mg/kg PCB. During the RI, PCB concentrations in surficial residuals ranged from non-detect to 36 mg/kg. Since residuals are primarily located within the top two feet of soil, no samples deeper than two feet bgs were collected. The extent of contamination has not been fully defined and shall be addressed during remedial design of the selected remedy.

AMW-3A Area:

No pre-RI samples were collected. In January 1998, 21 samples were collected as part of the RI from 4 locations adjacent to monitoring well AMW-3A. PCB concentrations in surficial

samples (0 to 2 ft bgs) ranged from 0.84 mg/kg to 3.5 mg/kg and in subsurface samples, PCB concentrations ranged from 0.94 mg/kg to 62 mg/kg (5.5 to 6.0 ft bgs). In July 1998, an additional 22 samples were collected from 7 locations. Four of the 7 locations were 20 to 40 feet from the original January 1998 locations. PCB concentrations in surficial soil samples collected at these locations ranged from non-detect to 2.9 mg/kg. In subsurface samples, PCB concentrations ranged from non-detect to 19 mg/kg PCB (3 to 4 ft bgs). Two of the seven locations sampled are north of AMW-3A, adjacent to the Wright property, but on land owned by Georgia-Pacific. Maximum PCB concentration in surface soil at this location was 3.1 mg/kg (0 to 2 ft bgs), and in subsurface soil, the maximum concentration was 61 mg/kg PCB (2 to 4 ft bgs) near SB-3A-103. The remaining location south of AMW-3A, adjacent to the Bloomfield property but on land owned by Georgia-Pacific, had a PCB concentration of 3.1 mg/kg in surface soil and 1.1 mg/kg in subsurface soil. In March 1999, 24 samples were collected from 6 locations to the north and south of the AMW-3A area. Surficial PCB concentrations ranged from non-detect to 5.9 mg/kg and subsurface PCB concentrations ranged from non-detect to 1.7 mg/kg (2 to 4 ft bgs).

Residential Property South of Willow Boulevard Landfill:

In 1987, the Michigan Department of Public Health (MDPH) collected pre-RI surface soil samples at 19 locations as a result of resident concerns regarding flooding in the Lakewood neighborhood. Only one sample had a PCB concentration of 0.08 mg/kg and was considered by the MDPH not to pose a threat to public health. In 1999, Georgia-Pacific collected subsurface samples during the RI. No PCBs were detected in any of the subsurface samples.

Residential Property South of A-Site Landfill:

No pre-RI samples were collected. During the RI, surface and subsurface soil samples were collected at residential properties including the Wright, Bloomfield, Adkins, Wadsworth, and Scott properties. All soil samples were below the State residential cleanup criteria of 4.0 mg/kg.

Wright Property

No PCBs were detected in any of the three surface soil samples collected. One sample, from a boring taken on the Wright property, had a PCB concentration of 4.4 mg/kg. However, the property where this sample was taken was on land owned by Georgia-Pacific. The fence line was relocated and there is now a barrier between the Wright property and the sample location.

Bloomfield Property

Four surface and eight subsurface soil samples were collected from four soil borings. Two of the four surface samples had PCB detections ranging from 0.14 to 1.5 mg/kg, which are below the residential criterion of 4.0 mg/kg. The two remaining surface samples and the eight subsurface samples were all reported as non-detect.

Adkins Property

Nine surficial samples were collected from nine borings. One sample had a PCB concentration of 0.14 mg/kg (estimated). All other samples were reported as non-detect. Of the 37 subsurface

samples collected from 9 borings, PCB concentrations ranged from non-detect to 1.0 mg/kg, which is below the residential criterion.

Wadsworth Property

No PCBs were detected in any of the six surficial samples collected at three soil borings on this property. PCBs concentrations in three subsurface samples collected from two borings ranged from non-detect to 0.12 mg/kg, which is below the residential criterion.

Scott Property

Fifteen test pits were dug, and two surficial soil samples were collected to determine the extent and nature of gray materials observed on the property. PCB concentrations in the two surficial soil samples were reported as non-detect. No PCBs were detected in any of the four subsurface samples collected.

6.0 Current and Potential Future Land and Resource Uses

Current land use near OU2 is industrial, commercial, and residential. The Willow Boulevard and A-Site Landfills are inactive disposal areas. The A-Site is zoned for industrial use. When the A-Site was zoned, the Willow Boulevard Landfill did not exist; and therefore, it was not zoned. If the Willow Boulevard Landfill was zoned today, it would likely be zoned industrial based on a record review indicating 40 years of prior industrial land use. The land adjacent to and south of OU2 is zoned residential. Future land use is expected to remain industrial at the landfills and residential to the south based on a review of current and historical use of the property and zoning maps.

OU2 is located adjacent to the Kalamazoo River. The Kalamazoo River is used for recreational purposes (e.g., swimming, boating, and fishing). River water is not used as a drinking water source and is not expected to be used as a drinking water source in the future. All properties within the City of Kalamazoo limits are connected to the City of Kalamazoo's public water supply. The City draws its water from four municipal wells located within a ½ mile north of OU2. There are however, four domestic wells and one industrial well, located within a ½ mile of OU2. Three of the domestic wells were plugged and are no longer being used. No records exist for the fourth well and it is not known whether this well is being used for drinking water.

7.0 Summary of Site Risk

The Michigan Department of Environmental Quality (MDEQ) completed a Site-wide *Final (Revised) Human Health Risk Assessment* and *Baseline Ecological Risk Assessment* for the entire Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site. The Human Health Risk Assessment (HHRA) quantitatively assessed potential risks to human health for different exposure pathways including the consumption of fish, direct contact with contaminated floodplain soils, and inhalation of dust and volatile emissions from floodplain soils behind the State-owned dams. The HHRA concluded the most significant exposure pathway is the consumption of fish from the river because fish bioaccumulate PCBs from exposure to PCB-

contaminated material, surface water, and prey. Recreational activities, including swimming, boating, and wading the river, do not pose a health risk to people. The Baseline Ecological Risk Assessment (BERA) concluded that sensitive piscivorous consumers, such as mink, are the most at risk compared to other representative ecological receptors. Omnivorous birds (represented by the robin) that consume a substantial amount of earthworms are also at significant risk if foraging takes place in contaminated areas, and terrestrial mammals (represented by the red fox) may be at some risk if foraging is concentrated in riparian areas whose prey reside in contaminated areas and have taken up substantial amounts of PCBs.

For OU2, no quantitative risk assessment was performed. Instead, potential risks associated with exposure pathways at OU2 were qualitatively assessed to determine which media would need to be targeted for remediation and/or environmental controls.

Exposure pathways assessed include ingestion of and dermal contact with contaminated residual, soil, and sediment; inhalation of airborne releases; and erosion into aquatic habitat. Media evaluated include air, surface soils, residuals and sediment, subsurface soils, surface water, and groundwater/leachate. Potential risks associated with exposure pathways were qualitatively assessed by comparing maximum PCB concentrations detected in the RI with cleanup criteria based on future land use and protective ranges established in the BERA and the HHRA. Cleanup criteria used in the qualitative assessment of potential risk at OU2 include:

- Generic Commercial II and Industrial Land Criteria of 16 mg/kg PCBs (soil) protective of human health for onsite workers and/or trespassers, established under Part 201, Environmental Remediation of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended, and Part 201 Administrative Rules;
- Generic Residential Land Use Criteria of 4 mg/kg PCB (soil) protective of human health for residential land-use, established under Part 201, Environmental Remediation of Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended, and Part 201 Administrative Rules;
- The No Observed Adverse Effect Level (NOAEL) to Lowest Observed Adverse Effect Level (LOAEL) range of 6.5 mg/kg to 8.1 mg/kg PCB in soil and/or sediment for the protection of terrestrial ecological receptors (the American Robin) as established in the BERA; and
- The HHRA sediment cleanup criteria protective of people consuming fish range of 0.04 mg/kg to 0.30 mg/kg PCB; however, because MDEQ has a detection limit of 0.33 mg/kg for PCBs, the cleanup criteria protective for people consuming fish defaults to the 0.33 mg/kg.

This section of the ROD summarizes the results of the qualitative evaluation of potential risks to human health and ecological receptors at OU2. In accordance with U.S. EPA guidance on preparing RODs, the information presented here focuses on the information that is driving the need for the response action and does not necessarily summarize the results of the Site-wide

BERA report or the methods used in Act 451 Part 201 to calculate protective cleanup levels for a particular land use. Further information is contained in the documents titled, *Final (Revised) Human Health Risk Assessment (April 2003)*, *Final (Revised) Baseline Ecological Risk Assessment (April 2003)* and *Remedial Investigation/Focused Feasibility Study Report (November 2004)*. State of Michigan Generic Cleanup Criteria under Public Act 451, Part 201 (Environmental Response) of the Natural Resource and Environmental Protection Act can be found at www.michigan.gov/deq. These documents are also included in the Administrative Record for OU2.

7.1. Identification of Contaminants of Concern

PCBs are the primary contaminant of concern and the risk driver at OU2. The primary media of concern are residual, soil, and sediment.

7.2 Summary of Qualitative Assessment of Potential Risks to Human Health and Ecological Receptors

The qualitative assessment of risk to human health and ecological receptors is summarized below. Current and future land-use of OU2 areas were considered in the determination of whether an area poses an actual or potential risk to human health. Areas zoned industrial or areas not zoned but likely to remain industrial were evaluated with respect to the State's health-based soil criteria for industrial/commercial land use. Areas zoned residential were evaluated with respect to the State's health-based soil criteria for residential land use. For all areas, risks to ecological receptors were evaluated with respect to ranges established in the BERA for the protection of ecological receptors.

Technical Memorandum 9 identifies wetlands at OU2. The wetlands identified include a small portion of the Willow Drainageway, the Area South of the A-Site Berm, the former Olmstead Creek, and the Area East of Davis Creek. Wetland areas will be further evaluated during the remedial design phase of the remedy. During the remedial design phase of the remedy, a scientifically valid indicator of wetland inundation period will be established in order to determine where a sediment-to-fish-to-consumer exposure pathway in OU2 wetland areas presents an unacceptable risk to consumers (people or mink) of fish. If, after applying the inundation period indicator to a wetland area a sediment-to-fish-to-consumer exposure pathway is determined to present an unacceptable risk to consumers of fish, then the more conservative aquatic sediment criteria established in the HHRA will be applied to protect people who consume the fish. The aquatic sediment criteria established in the HHRA ranges from 0.04 mg/kg to 0.30 mg/kg PCB; however, because MDEQ has a detection limit of 0.33 mg/kg for PCBs, the cleanup criteria protective for people consuming fish defaults to 0.33 mg/kg. The sediment cleanup criteria of 0.33 mg/kg PCB is also protective of fish-eating animals. If after applying the inundation period indicator to a wetland area a sediment-to-fish-to-consumer exposure pathway is determined not to present an unacceptable risk to consumers of fish, then a cleanup level that is within the acceptable NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg PCB will be applied to these wetlands to protect terrestrial ecological receptors.

Table 5, below, and the following paragraphs summarize the maximum PCB concentrations detected in the RI; the cleanup criteria applicable to each area; and the media targeted for remediation. Applicable cleanup criteria for OU2 areas are highlighted in gray in Table 5, below.

Table 5 – Maximum PCB Concentrations, Applicable Cleanup Criteria and Media Targeted For Remediation

| Operable Unit Areas | Maximum RI PCB Concentration (mg/kg) | Applicable Cleanup Criteria ¹ | | | | |
|---|--------------------------------------|--|--|--|---|--|
| | | Media Targeted for Remediation | Part 201 Generic Commercial II & Industrial Criteria | Part 201 Residential Land Use Criteria | Terrestrial Criteria (NOAEL/LOAEL) in Ecological Risk Assessment ⁴ | Default Sediment Criteria protective of people who eat the fish ⁴ |
| Willow Boulevard Landfill & Willow Drainageway ⁴ | Surface ² < 4 | Residual | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | Subsurface 160 | | | | | |
| | Surface NC ³ | Soil | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | Subsurface 30 | | | | | |
| A-Site Landfill | Surface < 4 | Residual | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | Subsurface 330 | | | | | |
| Area South of A-Site Berm ⁴ | Surface 14 | Soil | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | Subsurface 37 | | | | | |
| Former Olmstead Creek ⁴ | Surface 7.6 | Sediment | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | | | | | | |
| Area East of Davis Creek ⁴ | Surface 36 | Residual Soil & Sediment | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | Subsurface NC ³ | | | | | |
| AMW-3A Area | Surface 5.9 | Soil | 16 mg/kg | 4 mg/kg | 6.5 mg/kg/8.1 mg/kg | 0.33 mg/kg |
| | Subsurface 62 | | | | | |

¹ Applicable cleanup criteria shaded in grey.

² PCB concentrations at locations sampled before a temporary sand cover placed on top of the landfill. Pre-RI maximum PCB concentration is 270 mg/kg.

³ Samples were not collected.

⁴ An aquatic sediment cleanup criterion will be applied to wetlands that are inundated for a period of time such that the sediment-to-fish-to-consumer (people and mink) exposure pathway presents an unacceptable risk to consumers of fish. Wetlands that are inundated for a period of time such that the sediment-to-fish-to-consumer exposure pathway does not present an unacceptable risk to consumers of fish, then a cleanup level that is within the NOAEL/LOAEL range of 6.5 mg/kg PCB to 8.1 mg/kg PCB will be applied to these wetlands to protect terrestrial ecological receptors.

Willow Boulevard Landfill

The Willow Boulevard Landfill was not zoned, but its historical use and expected future use is industrial; therefore, PCB concentrations in RI samples were compared to the Part 201 Generic Commercial II/Industrial cleanup criteria of 16 mg/kg, which is protective of human health, and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg for the protection of terrestrial receptors.

Based on data collected during the RI, PCB concentrations in surficial residuals do not exceed the Part 201 Generic Commercial II/Industrial cleanup criteria, nor do they exceed the NOAEL/LOAEL range at locations explored. Therefore, based on data collected during the RI, surficial residuals do not pose an unacceptable risk to human health or terrestrial receptors.

However, 2001 photo documentation shows that the geofabric that was placed on top of the Willow Boulevard Landfill during the IRA is torn and that residuals are visibly eroding into the river. Continued erosion of residuals into the Kalamazoo River may pose an unacceptable risk to consumers (people and mink) that are exposed to PCBs through the consumption of fish. In subsurface residuals, the maximum PCB concentration detected is 160 mg/kg. If subsurface residuals were dug up and brought to the surface, then people and terrestrial receptors can be exposed to PCBs in concentrations that would pose an unacceptable risk. Although not a permitted landfill, the State's landfill closure requirements are considered an applicable or relevant and appropriate (ARAR) state requirement. Given these factors, remedial action is warranted at the Willow Boulevard Landfill.

Willow Drainageway

The Willow Drainageway was not zoned, but its historical use and expected future use is industrial. Therefore, PCB concentrations in RI samples were compared to the Part 201 Generic Commercial II/Industrial cleanup criteria of 16 mg/kg, which is protective of human health, and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg for the protection of terrestrial receptors. No surface soil or sediment samples were collected during the RI. However, the Drainageway receives surface water runoff from the Willow Boulevard Landfill and surrounding areas; and therefore, it is likely that PCBs may be present in surface soil and/or sediment. A risk to human and ecological receptors may be present if PCB concentrations in surface soil and/or sediment exceed the Part 201 Generic Commercial II/Industrial cleanup criteria or exceed the NOAEL/LOAEL range. The maximum PCB concentration detected in subsurface soil is 30 mg/kg, which exceeds the Part 201 Commercial II/Industrial cleanup criteria of 16 mg/kg PCB and exceeds the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg. Therefore, if subsurface soil was dug up and brought to the surface, then people and ecological receptors can be exposed to PCBs in concentrations that would pose an unacceptable risk. Given the above factors, remedial action is warranted at the Willow Drainageway.

Additionally, because a portion of the Willow Drainageway is within a wetland, that portion will be further evaluated during the remedial design phase of the remedy as discussed in Section 7.2 of this ROD.

A-Site Landfill

The A-Site Landfill is zoned industrial; therefore, PCB concentrations in RI samples were compared to the Part 201 Generic Commercial II/Industrial cleanup criterion of 16 mg/kg, which is protective of human health, and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg for the protection of terrestrial receptors.

Based on data collected during the RI, PCB concentrations in surface soil do not exceed the Part 201 Commercial II/Industrial cleanup criteria and are below the NOAEL/LOAEL range at the locations explored. Therefore, based on data collected during the RI, surficial soils do not pose an unacceptable risk to people or terrestrial receptors. However, 2001 photo documentation shows exposed paper residuals at the surface of the landfill. These areas may pose an unacceptable risk to human and terrestrial receptors if PCB concentrations in the residuals exceed the Part 201 Commercial II/Industrial cleanup criteria or exceed the NOAEL/LOAEL range. In subsurface residuals, the maximum PCB concentration is 330 mg/kg. If subsurface residuals were dug up and brought to the surface, then people and terrestrial receptors can be exposed to PCBs in concentrations that would pose an unacceptable risk. Although not a permitted landfill, the State's landfill closure requirements are considered an ARAR. Given these factors, remedial action is warranted at the A-Site Landfill.

Area South of the A-Site Berm

The Area South of the A-Site Berm is zoned industrial; therefore, PCB concentrations in RI samples were compared to the Part 201 Generic Commercial II/Industrial cleanup criteria of 16 mg/kg, which is protective of human health, and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg PCB for the protection of terrestrial ecological receptors. Based on data collected, PCB concentrations in surface soil do not exceed the Part 201 Generic Commercial II/Industrial cleanup criteria but do exceed the NOAEL/LOAEL range. Therefore, surface soils pose a risk to ecological receptors but not to humans. The maximum PCB concentration in subsurface soil is 37 mg/kg, which exceeds the Part 201 Generic Commercial II/Industrial cleanup criteria and exceeds the NOAEL/LOAEL range. If subsurface residuals were dug up and brought to the surface, then people and ecological receptors can be exposed to PCBs in concentrations that would pose an unacceptable risk. Given the above, remedial action is warranted at the Area South of the A-Site Berm.

Additionally, because the Area South of the A-Site Berm is within a wetland, this area will be further evaluated during the remedial design phase of the remedy as discussed in Section 7.2 of this ROD.

Davis Creek

Davis Creek is a water body and therefore, is not zoned for land use. PCB concentrations detected in sediment do not exceed any applicable cleanup criteria including the default sediment criteria of 0.33 mg/kg for the protection of people who eat the fish. Therefore, no remedial action is warranted at Davis Creek.

Former Olmstead Creek

The former Olmstead Creek area is zoned industrial; therefore, PCB concentrations in RI sediment samples were compared to Part 201 Commercial II/Industrial cleanup criteria of 16 mg/kg, which is protective of human health, and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg PCB for the protection of terrestrial ecological receptors.

PCB concentrations in RI sediment samples do not exceed the Part 201 Generic Commercial II/Industrial cleanup criteria and PCB concentrations are within the NOAEL/LOAEL range. However, because the former Olmstead Creek is within a wetland, the creek will be further evaluated during the remedial design phase of the remedy as discussed in Section 7.2 of this ROD.

Area East of Davis Creek

The Area East of Davis Creek is zoned industrial; therefore, PCB concentrations in RI residuals were compared to Part 201 Commercial II/Industrial cleanup criteria of 16 mg/kg, which is protective of human health, and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg PCB for the protection of terrestrial ecological receptors. The maximum PCB concentration in surficial residual exceeds the Part 201 Commercial II/Industrial cleanup criteria and the NOAEL/LOAEL range. Therefore, surficial residuals pose a risk to human and ecological receptors. Given the above, remedial action is warranted at the Area East of Davis Creek.

Additionally, because the Area East of Davis Creek is within a wetland, this area will be further evaluated during the remedial design phase of the remedy as discussed in Section 7.2 of this ROD.

AMW-3A Area

The AMW-3A Area is zoned residential; therefore, PCB concentrations in RI soil samples were compared to Part 201 Residential cleanup criteria of 4 mg/kg and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg for the protection of ecological receptors. Maximum PCB concentrations in surface soil exceed the Part 201 Generic Residential cleanup criteria but do not exceed the NOAEL/LOAEL range. Therefore, surface soils pose an unacceptable risk to humans but not to ecological receptors. The maximum PCB concentration in subsurface soil exceeds the Part 201 Generic Residential cleanup criteria and the NOAEL/LOAEL range. If subsurface residuals were dug up and brought to the surface, then people and ecological receptors can be exposed to PCBs in concentrations that would pose an unacceptable risk. Given the above, remedial action is warranted at the AMW-3A area.

Residential Areas

The only residential areas adjacent to OU2 are located to the south of the landfills. Residential - zoned areas were compared to the Part 201 Residential cleanup criteria of 4 mg/kg and the NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg for the protection of ecological receptors. At locations where samples were taken, soils at residential properties south of the Willow Boulevard and A-Site Landfills do not exceed the Part 201 Residential cleanup criteria or the

NOAEL/LOAEL range; therefore, soils do not pose a risk to people or ecological receptors. Given the above, no remedial action is warranted at the residential areas south of OU2.

7.3 Basis for Action

A response action at OU2 is warranted because PCB concentrations in surficial residuals, soil, and sediment at OU2 exceed the Part 201 Commercial II/Industrial and Residential cleanup criteria and/or the NOAEL/LOAEL range established in the BERA for the protection of ecological receptors and because the landfills will be left in place in perpetuity. Additionally a response action at OU2 may be warranted because of the potential migration of PCBs from the landfills and adjacent areas (via erosion or surface water runoff) into the Kalamazoo River and because of PCB concentrations in sediment located in OU2 wetland areas that may present an unacceptable risk to consumers of the fish. Due to the above considerations, the response action selected in this Record of Decision is necessary to protect the public health or welfare or the environment from the actual or threatened releases of hazardous substances into the environment.

8.0 Remedial Action Objectives and ARARs

8.1 Remedial Action Objectives (RAOs)

The Remedial Action Objectives for OU2 are to: 1) eliminate exposure to PCB-contaminated material exceeding applicable land-use and/or risk based cleanup criteria; 2) prevent PCB migration, via erosion or surface water runoff, into the Kalamazoo River; and 3) mitigate, to the extent practicable, adverse effects to the environment due to implementation of a remedial action.

8.2 Applicable or Relevant and Appropriate Requirements (ARARs)

Section 121(d) of CERCLA requires that Superfund remedial actions at least attain legally applicable or relevant and appropriate Federal and State requirements, standards, criteria, and limitations which are collectively referred to as ARARs, unless such ARARs are waived under CERCLA Section 121(d)(4). Applicable requirements are those cleanup standards and other substantive requirements, criteria, or limitations promulgated under Federal environmental or State environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a Superfund site. Relevant and appropriate requirements are those cleanup standards and other substantive requirements, criteria, or limitations promulgated under Federal environmental or State environmental or facility siting laws that, while not applicable, address problems or situations sufficiently similar to those encountered at the Superfund site that their use is well suited to the particular site.

In addition to ARARs, guidance materials that have not been promulgated or regulatory standards that are not applicable or relevant and appropriate may be considered (including local/county requirements); these are referred to as items “to be considered” (TBC). While TBCs may be considered along with ARARs, they do not have the status of ARARs. A complete list of ARARs and TBCs identified for OU2 are presented in Section 13.2 of this ROD.

9.0 Description of Alternatives

Following development of RAOs, a number of technology types and process options⁵ for addressing PCB-contaminated material at OU2 were identified and screened in the FFS. Based upon the screening of technologies, MDEQ evaluated and assembled a range of alternatives. Four remedial alternatives (Alternative 1, Alternative 2 with bank stabilization options 2A, 2B, or 2C, Alternative 3, and Alternative 4) were evaluated in the FFS and are identified below.

Alternative 1: No Action

Alternative 2: Consolidation and Containment of Select Materials⁶

Sub-alternative 2A: Consolidation and Containment of Select Materials, Install New Sheet Piling at Willow Boulevard Landfill, and Retain Existing Sheet Piling at A-Site Landfill

Sub-alternative 2B: Consolidation and Containment of Select Materials, Remove Existing Sheet Piling at A-Site Landfill, and Re-Grade/Stabilize Banks with a Setback at Willow Boulevard and A-Site Landfills

Sub-alternative 2C: Consolidation and Containment of Select Materials, Re-Grade/Stabilize Banks using Ecologically Friendly Materials with a Setback at Willow Boulevard Landfill, and Retain Existing Sheet Piling at A-Site Landfill

Alternative 3: Removal of all OU2 Residual/Material and Off-Site Disposal

Alternative 4: Removal of the Willow Boulevard Landfill Residuals and Consolidation at the A-Site Landfill

⁵ An example of a technology type is “soil removal,” and an example process option within that technology type is “mechanical excavation.” Selection of a particular process option as representative was done to streamline the development of potential remedial alternatives.

⁶ “Select materials” refers to PCB-contaminated residual, soil, and/or sediment at the Willow Drainageway Area, the Area South of the A-Site Berm (including the Former Olmstead Creek), the Area East of Davis Creek, and the area near monitoring well AMW-3A.

9.1 Description of Alternatives/Remedy Components

9.1.1 Alternative 1 - No Action

Description of Alternative

The no-action alternative is required under the NCP and serves as a baseline against which the other potential remedial alternatives can be compared. This alternative would result in increased potential for PCBs to migrate to the Kalamazoo River over time since no action and no maintenance of the existing fence, would increase the chance of exposing trespassers and anglers to PCB-containing residuals.

Cost

No costs are associated with this alternative.

9.1.2 Alternative 2 – Consolidation and Containment of Select Materials

Description of Alternative

Alternative 2 is not a stand-alone remedy, as it would be paired with one of the bank stabilization options described under Sub-alternatives 2A, 2B, or 2C. Under Alternative 2, approximately 13,800 cyd³ of PCB-contaminated residual, soil, and/or sediment would be excavated from the Willow Drainageway, the Area South of the A-Site Berm (including Former Olmstead Creek), the Area East of Davis Creek, and the area near monitoring well AMW-3A, and consolidated with existing residuals at the A-Site Landfill. Post-removal confirmatory sampling and analysis would be performed at the excavation areas. Excavated areas would be mitigated by backfilling with clean sand to prevent ponding and revegetated to prevent erosion. Areas identified as wetlands would be backfilled to grade or restored in accordance with an approved wetland restoration plan. After all waste is placed into the A-Site Landfill, both the Willow Boulevard and A-Site Landfills will be capped with a cover system that is compliant with Part 115, Solid Waste Management, of the NREPA. Erosion control measures, such as riprap, would be placed on the sides of the landfill to protect the cap and contents of the landfill from a 100-year flood. The isolation of PCB-containing residuals would reduce the potential for human and ecological exposure and erosion control measures would reduce the migration of contaminated materials into the Kalamazoo River and adjacent areas. Long-term maintenance of the cap and institutional controls (perimeter fence with posted warning signs and deed restrictions) would be implemented. Groundwater monitoring will also be conducted and results evaluated. If contaminants are present in groundwater at concentrations that present a risk to public health or wildlife, then a groundwater cleanup remedy may be required, but that remedy will be done under a separate U.S. EPA action.

Cost

Alternative 2 costs are associated with the following construction activities: mobilization/demobilization, work area isolation, site preparation, consolidation of select residuals/soils/sediments, sediment stockpile/stabilization (if necessary), water treatment, bank/dike consolidation and stabilization, erosion control, cap with a flexible membrane liner

(FML), vegetative cover, and health and safety. Costs for Alternative 2 with bank stabilization options 2A, 2B, and 2C are presented below.

9.1.3 Sub-alternative 2A - Consolidation and Containment of Select Materials, Install New Sheet Piling at Willow Boulevard Landfill, and Retain Existing Sheet Piling at the A-Site Landfill

Description of Alternative

This option includes all components of Alternative 2 and includes the installation of new sheet piling along the perimeter of the Willow Boulevard Landfill adjacent of the Kalamazoo River. Sheet piling, as an erosion control measure, would reduce the migration of contaminated materials into the Kalamazoo River. Under this option, 1,800 feet of sheet pile will be installed and extended at least 2 feet above the 100 year flood elevation to prevent PCB migration (via erosion or surface water runoff) from the landfill into the Kalamazoo River, the Former Olmstead Creek, and Davis Creek.

Cost

The estimated capital cost is approximately \$8.26 million, while the operation and maintenance (O&M) cost is approximately \$399,000 per year, including costs associated with long-term groundwater monitoring, for a total O&M cost of approximately \$4.95 million (30-year present worth analysis based on a 7% discount rate). The total project present worth cost for Sub-alternative 2A is approximately \$13.3 million.

9.1.4 Sub-alternative 2B - Consolidation and Containment of Select Materials, Remove Existing Sheet Piling at A-Site Landfill, and Re-Grade/Stabilize Banks with a Setback at Willow Boulevard and A-Site Landfills

Description of Alternative

This option includes all components of Alternative 2 and requires the existing sheet piling at the A-Site Landfill be removed or cut off below the waterline. The banks of the Willow Boulevard and A-Site Landfills would be pulled back to create a setback or protective buffer along the Kalamazoo River. The new banks of the landfill will be protected against erosion by using low-profile techniques including, but not limited to, articulated concrete, geoweb materials, or revetment blankets. As described under Alternative 2, the isolation of PCB-containing residuals would reduce the potential for human exposure and migration of contaminated materials into the Kalamazoo River. The setback and erosion control measures would allow new berms to be built and reduce habitat degradation posed by sheet pile by providing a buffer zone, while offering protection from flooding.

Costs

For purposes of cost analysis, a 50-foot setback distance from the river's edge was assumed. The actual setback distance would be determined during remedial design. Given the assumption of 50-foot setback, the estimated capital cost is approximately \$7.71 million, while the O&M cost is approximately \$399,000 per year, including costs associated with long-term groundwater

monitoring, for a total O&M cost of approximately \$4.95 million (30-year present worth analysis based on a 7% discount rate). The total project present worth cost for Sub-alternative 2B is approximately \$12.7 million.

9.1.5 Sub-alternative 2C -Containment of Select Materials, Re-Grade/Stabilize Banks using Ecologically Friendly Materials with a Setback at Willow Boulevard Landfill, and Retain Existing Sheet Piling at A-Site Landfill

Description of Alternative

This option includes all components of Alternative 2 but establishes a setback along the Kalamazoo River only at the Willow Boulevard Landfill; the sheet pile at the A-Site Landfill would remain in place. Upon re-grading and capping, the banks would be reinforced using permanent but ecologically friendly means of bank stabilization also commonly referred to as "soft engineering." Soft engineering techniques may include, but are not limited to shallow bank slopes, planting of live vegetation, log revetments, etc. As in Alternative 2, the isolation of PCB-containing residuals would reduce the potential for human exposures and reduce the potential migration of contaminated materials into the Kalamazoo River. This option attempts to integrate the A-Site Landfill's existing sheet piling with ecologically friendly erosion control measures at the Willow Boulevard Landfill reducing the impact (and habitat loss) of bank stabilization while controlling costs. This alternative also attempts to be responsive to the community's desire to reduce the landfill footprint and have a component of the remedy address aesthetics and habitat issues.

Costs

The actual setback distance would be established during remedial design. For purposes of cost analysis, a 50-foot setback distance from the river's edge was assumed. Given this assumption, the estimated capital cost is approximately \$6.57 million, while the O&M cost is approximately \$399,000 per year, including costs associated with long-term groundwater monitoring, for a total O&M cost of approximately \$4.95 million (30-year present worth analysis based on a 7% discount rate). The total project present worth cost for Sub-alternative 2C is approximately \$11.5 million.

9.1.6 Alternative 3 - Removal and Off-Site Disposal

Description of Alternative

Alternative 3 would involve the removal of all PCB-containing residuals (approximately 634,200 cyd³) from OU2 and adjacent areas and disposal in an off-site landfill permitted to receive TSCA material. This would be accomplished through the excavation, dewatering, and off-site disposal of residuals from the Willow Boulevard Landfill, the A-Site Landfill, and adjacent areas. Excavated residuals from these sites would be transported to and disposed of in an off-site landfill, thereby reducing or eliminating the need for on-site long-term monitoring or management. In the Area East of Davis Creek and the AMW-3A area, the extent of PCB contamination would be better defined. Adjacent residential properties (i.e., lots 38, 40, 41, 42, and 43) would be assessed to ensure excavation at OU2 does not reduce drainage capacity or

increase the likelihood of flooding; backfilling and re-vegetation may be necessary. Following the removal and disposal of residuals, these areas would be backfilled with clean material, graded, and restored to match the surrounding area.

Costs

Costs for this alternative are associated with construction activities including mobilization/demobilization, work area preparation, excavating residuals, stockpiling/stabilizing residuals, dewatering residuals, water treatment, transport and disposal of materials, site restoration, and health and safety. No O&M costs are associated with this alternative since all wastes would be disposed of off-site. The estimated capital cost associated with Alternative 3 is approximately \$46.1 million. Transportation and disposal of excavated residuals account for approximately 42 percent of the total capital cost. Costs for this alternative could be higher if portions of the waste in OU2 are determined to be characteristically hazardous waste under RCRA.

9.1.7 Alternative 4 - Removal of the Willow Boulevard Landfill Residuals and Consolidation at the A-Site Landfill

Description of Alternative

Alternative 4 would involve the removal of PCB-containing residuals (approximately 158,800 cyd³) from the Willow Boulevard Landfill (including the Willow Drainageway, the Area South of the A-Site Berm, and the Area East of Davis Creek). This would be accomplished through the excavation, dewatering, and on-site consolidation of residuals into the A-Site Landfill. The A-Site Landfill would be capped using a cover system (including a FML, as proposed by the PRP). The removal and isolation of PCB-containing residuals would eliminate the potential for human exposure, while erosion control measures would prevent the migration of contaminated residuals into the Kalamazoo River. In the Area East of Davis Creek and the AMW-3A area, the extent of soils containing PCBs exceeding appropriate cleanup criteria would be defined and addressed. Adjacent residential properties (i.e., lots 38, 40, 41, 42, and 43) would be assessed to ensure excavation at OU2 does not reduce drainage capacity or increase the likelihood of flooding; backfilling and re-vegetation may be necessary. Following the removal and disposal of residuals, these areas would be backfilled with clean material, graded, and restored to match the surrounding area. Long-term maintenance of the cover and institutional controls (perimeter fence with posted warning signs and deed restrictions) would be implemented. Groundwater monitoring will also be conducted consistent with the approach approved at the King Highway Landfill Operable Unit.

Costs

Costs for this alternative are associated with construction activities, including mobilization/demobilization, work area preparation, excavating and dewatering residuals, stockpiling/stabilizing residuals, water treatment, transport, and consolidation of materials, capping the A-Site, installing vegetative cover, and site restoration. The estimated capital cost associated with Alternative 4 is approximately \$12.86 million. The annual estimated O&M cost is approximately \$236,000 per year, including costs associated with long-term groundwater monitoring, for a total O&M cost of approximately \$2.93 million (30-year present worth analysis).

based on a 7% discount rate). The total project present worth cost for Alternative 4 is approximately \$15.8 million.

9.2 Common Elements and Distinguishing Features of Each Alternative

9.2.1 Common Elements

All alternatives, except Alternative 1, actively remediate OU2; however, some alternatives remediate to a greater degree than others do. Alternative 3 provides the highest degree of remediation since all PCB-contaminated materials at OU2 would be removed and disposed of off-site. Alternative 4 provides a high degree of remediation, but to a lesser extent than Alternative 3. Alternative 4 would result in a smaller landfill "footprint" by removing all residuals from the Willow Boulevard Landfill, and consolidating and containing those residuals at the A-Site Landfill. Alternative 1, Alternative 2 (with options 2A, 2B, and 2C) and Alternative 4 would require long-term monitoring of OU2, including groundwater monitoring and institutional controls since PCB-contaminated residuals would remain onsite. Only Alternative 3 may not require long-term monitoring since all PCB-contaminated residuals would be removed and disposed of at an off-site landfill.

9.2.2 Distinguishing Features

No active remediation would occur under Alternative 1. No sheet pile would exist at OU2 under Sub-alternative 2B and Alternative 3 because the existing sheet pile would be removed from the A-Site Landfill. Sheet pile would be present only at one landfill under Alternative 1 and Sub-alternative 2C, and at both landfills under Sub-alternative 2A. Long-term monitoring of OU2 may not be needed under Alternative 3 since both landfills would be removed and contaminated material disposed of off-site.

10.0 Summary of Comparative Analysis of Alternatives

This section of the ROD compares the alternatives against the nine criteria, noting how each compares to the other alternatives. A detailed evaluation of the original six alternatives can be found in the FFS. When selecting a remedy for a site, U.S. EPA considers the factors set forth in Section 121 of CERCLA by conducting a detailed analysis of the remedial alternatives in accordance with the NCP. Guidance documents have been developed to provide assistance for selecting a remedy, such as U.S. EPA's *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA* (OSWER Directive 9355.3-01) and U.S. EPA's *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (OSWER 9200.1-23.P). The detailed analysis consists of an assessment of the individual alternatives against each of the nine evaluation criteria (two threshold, five primary balancing, and two modifying criteria) and a comparative analysis focusing upon the relative performance of each alternative against those criteria. The nine evaluation criteria are described below.

Threshold Criteria

1. **Overall Protection of Human Health and the Environment** addresses whether a remedy provides adequate protection of human health and the environment and describes how risks posed by the site are eliminated, reduced, or controlled through treatment, engineering, or institutional controls. The selected remedy must meet this criterion.
2. **Compliance with Applicable or Relevant and Appropriate Requirements (ARARs)** addresses whether a remedy will meet the applicable or relevant and appropriate requirements. The selected remedy must meet this criterion or a waiver of the ARAR must be obtained.

Primary Balancing Criteria

3. **Long-Term Effectiveness and Permanence** refers to expected residual risk and the ability of a remedy to maintain reliable protection of human health and the environment over time, once cleanup levels have been met.
4. **Reduction of Toxicity, Mobility, or Volume Through Treatment** addresses the statutory preference for selecting remedial actions that employ treatment technologies that permanently and significantly reduce toxicity, mobility, or volume of the hazardous substances as their principal element. This preference is satisfied when treatment is used to reduce the principal threats at the site through destruction of toxic contaminants, reduction of the total mass of toxic contaminants, irreversible reduction in contaminant mobility, or reduction of total volume of contaminated media.
5. **Short-Term Effectiveness** addresses the period of time needed to implement the remedy and any adverse impacts that may be posed to workers, the community and the environment during construction of the remedy until cleanup levels are achieved. This criterion also considers the effectiveness of mitigative measures and time until protection is achieved through attainment of the RAOs.
6. **Implementability** addresses the technical and administrative feasibility of a remedy from design through construction, including the availability of services and materials needed to implement a particular option and coordination with other governmental entities.
7. **Cost** includes estimated capital costs, annual operation and maintenance costs (assuming a 30-year time period), and net present value of capital and operation and maintenance costs, including long-term monitoring.

Modifying Criteria

8. **State Agency Acceptance** considers whether the State support agency concurs with the selected remedy for the site.

9. **Community Acceptance** addresses the public's general response to the remedial alternatives and the preferred alternative presented in the Proposed Plan. The ROD includes a responsiveness summary that summarizes the public comments and U.S. EPA's response to those comments. The responsiveness summary is included under Part III of this ROD.

The full text of the detailed analysis of the six remedial alternatives against the nine evaluation criteria (including both the individual analysis and the comparative analysis) is contained in the November 2004 *Focused Feasibility Study Report* which is included in the Administrative Record for OU2. This section of the ROD summarizes the highlights of the comparative analysis.

10.1 Overall Protection of Human Health and the Environment

Sub-alternatives 2A, 2B, 2C and Alternatives 3 and 4 include measures that actively address PCB-contaminated material within the landfills and adjacent areas. Alternative 3 affords the highest degree of overall protection of human health and the environment since its implementation would result in the excavation and off-site disposal of all PCB-containing materials at OU2, thereby eliminating risks to the public and ecological receptors. Alternative 4 affords a high degree of overall protection but to a lesser extent than Alternative 3. Under Alternative 4, risk to human health and the environment would be reduced since all PCB-containing materials (above and below the water table) within the Willow Boulevard Landfill and at adjacent areas, would be excavated and contained under an engineered cap at the A-Site Landfill. Overall protection can also be achieved by isolating PCB-contaminated materials onsite under an engineered cap (Sub-alternatives 2A, 2B, 2C, and Alternative 4) and implementing bank stabilization, erosion control measures, institutional controls, and long-term maintenance. These components would eliminate the potential for direct contact with residuals and reduce PCB transport into the Kalamazoo River. No active remediation measures would be taken under Alternative 1; and therefore, it would not be protective of public health and the environment.

10.2 Compliance with ARARs

Section 121(d) of CERCLA requires that Superfund remedial actions meet ARARs. A brief discussion of the primary ARARs is provided below. In addition to ARARs, non-enforceable guidelines, criteria, and standards may be useful in evaluating remedial alternatives. As described previously in Section 8.2 of this ROD, these guidelines, criteria and standards are known as TBCs.

ARARs for the selected remedy include the following:

- Surface water quality standards contained in Part 31, Water Resources Protection, of the NREPA;

- Rules established pursuant to Part 31, Water Resources Protection, of the NREPA regarding permit requirements;
- Site-specific pollutant limitations and performance standards which are designed to protect surface water quality contained in the Federal Clean Water Act (CWA);
- Regulations prohibiting unauthorized obstruction or alteration of any navigable water in the United States (dredging, fill, cofferdams, piers, etc.) contained in the Federal River and Harbor Act;
- Regulations regarding the dredging or filling of lakes or stream bottoms contained in Part 301, Inland Lakes and Streams, of the NREPA;
- Rules prescribing soil erosion and sedimentation control plans, procedures, and measures contained in Part 91, Soil Erosion and Sedimentation Control, of the NREPA;
- Rules prohibiting the emissions of air contaminants in quantities which cause injurious effects to human health, animal life, plant life of significant economic value, and/or property contained in Part 55, Air Pollution Control, of the NREPA;
- National ambient air quality standards contained in the Federal Clean Air Act;
- Statutory provisions and rules specifying environmental response, risk assessment, RA, and site cleanup criteria pursuant to Part 201, Environmental Remediation, of the NREPA;
- Certain regulations regarding the construction, operation, and closure of sanitary landfills, solid waste transfer facilities, and solid waste processing plants pursuant to Part 115, Solid Waste Management, of the NREPA;
- Effluent standards for toxic compounds including PCBs contained in the Federal WPCA Toxic Pollutant Effluent Standards;
- Regulations regarding activities in wetlands found in Part 303, Wetland Protection, of the NREPA; and
- Federal regulations under the Toxic Substances and Control Act (TSCA) regarding the risk-based disposal of PCB remediation waste, 40 C.F.R. § 761.61(c).

All alternatives would comply with all ARARs with the exception of Alternative 1. Alternative 1 would not be compliant with Part 201, which establishes the cleanup criteria to be used while remediating a site. Alternative 1 would also not comply with the TSCA ARAR, as an unreasonable risk of injury to human health and the environment would exist.

10.3 Long-Term Effectiveness and Permanence

A primary measure of long-term effectiveness of an alternative is the magnitude of residual risk to human health and the environment after remediation. Alternative 1 would not be an effective or permanent alternative, because it does not reduce risk. With proper and effective operation and maintenance, Sub-alternatives 2A, 2B, 2C and Alternatives 3 and 4 would provide long-term effectiveness by isolating or removing PCB-contaminated material from OU2. Alternative 3 has the highest degree of long-term effectiveness and permanence because all PCB-containing materials would be excavated and disposed of at an off-site permitted landfill. Sub-alternatives 2A, 2B, 2C and Alternative 4 (consolidation and containment) also have a high degree of effectiveness, but must rely on long-term maintenance to prevent barrier deterioration and ensure that potential exposure pathways are controlled. The magnitude of residual risk and exposure to human health and the environment is directly related to the adequacy and reliability of the cover system, long-term groundwater monitoring, and institutional controls.

10.4 Reduction of Toxicity, Mobility, or Volume Through Treatment

None of the five alternatives includes any active treatment of contaminated materials; therefore, there would be no reduction in toxicity, mobility, or volume through treatment. However, four of the alternatives result in varying degrees of reductions to mobility and/or volume.

Alternative 1 would achieve no reduction in mobility of contaminated residuals along the riverbank or floodplain, no reduction in toxicity, and no reduction in volume. Sub-alternatives 2A, 2B, and 2C would reduce mobility by isolating residuals in place through consolidation of residuals/soil/sediment and placement of a cap (with a FML), but there would be no net reduction of volume at OU2. Sub-alternatives 2A, 2B, and 2C do not eliminate the potential for mobilization of contaminants to the groundwater and surface water interface (GSI), as saturated residuals below the water table would remain at the Willow Boulevard Landfill. Long-term groundwater monitoring would verify whether PCBs are mobilizing to groundwater so that an appropriate action could be taken.

Alternative 3 would reduce the potential mobility of contaminated materials through the removal and containment at a permitted off-site landfill. Alternative 3 would also reduce the volume of PCB-contaminated material at OU2 through excavation and off-site disposal of materials, but this volume would just be moved from one place to another. Alternative 4 provides no net reduction in volume since the PCB-contaminated material from the Willow Boulevard Landfill and adjacent areas would be consolidated into the A-Site Landfill. Alternative 4 would reduce mobilization of contaminants through isolation and containment under a landfill cap.

10.5 Short-Term Effectiveness

There are no short-term effectiveness concerns associated with Alternative 1 because no active remedial measures would be implemented. Sub-alternatives 2B and 2C have short-term impacts

associated with them because they both require excavating and moving residuals. Although controls and monitoring reduce the potential for short-term impacts, risks associated with PCB exposure by workers and possibly the community (via dust borne releases) would increase proportionally with increased handling of materials. Because Alternative 3 involves removal and transport of a large amount of material, it poses an incremental increase in short-term exposure risk and a possible further reduction in short-term effectiveness. Alternative 4 also involves similar short-term effectiveness concerns, but it does not involve as much excavation, materials handling, or transportation as Alternative 3. These factors make Alternative 3 the least effective alternative in the short-term. Sub-alternative 2C has a moderate amount of short-term impacts associated with it but less than Sub-alternative 2B, which requires more excavation and handling of materials. Sub-alternative 2A has the least amount of short-term impacts since it involves the least amount of materials handling.

10.6 Implementability

Alternative 1 cannot be evaluated by this criterion because no active remedial measures would be implemented. Sub-alternatives 2A, 2B, 2C and Alternatives 3 and 4 include remedial measures that include proven technologies and that are considered to be technically feasible. Services and materials necessary to implement these alternatives are readily available through local vendors.

Alternative 3 would require a substantial amount of equipment. The engineering, design, and administrative requirements increase with the complexity of the alternative in the following order: Sub-alternative 2A (no excavation), Sub-alternative 2C (limited excavation), Sub-alternative 2B (significant excavation), Alternative 4 (extensive excavation), and Alternative 3 (complete excavation). The degree of difficulty in implementing these alternatives increase with the amount and type of material that would be excavated and the distance it would take to travel to the selected disposal facility. Excavating residuals below the groundwater table may present a high degree of technical difficulty. Due to the magnitude of work required for Alternatives 3 and 4, Sub-alternative 2A would be considered the most implementable, then Sub-alternative 2C, followed by Sub-alternative 2B.

10.7 Cost

Cost includes estimated capital costs and annual operation and maintenance costs (assuming a 30-year time period and a 7% discount rate). Present worth cost represents the total cost of an alternative over time in terms of today's dollar value. In accordance with U.S. EPA guidance, cost estimates are expected to be accurate within a range of +50 to -30 percent. Detailed cost estimates for the four remedial alternatives are presented in the November 2004 *Focused Feasibility Study Report* and in Attachment 1 to this ROD. The estimated present worth cost to implement the six potential remedial alternatives at OU2 are as follows:

- Alternative 1: \$0
- Sub-alternative 2A: \$13.3 million
- Sub-alternative 2B: \$12.7 million

- Sub-alternative 2C: \$11.5 million
- Alternative 3: \$46.1 million
- Alternative 4: \$15.8 million

10.8 State Agency Acceptance

The MDEQ authored the RI/FFS, which included an evaluation and analysis of potential remedial alternatives against the nine evaluation criteria under the NCP. As the support agency, U.S. EPA reviewed and provided comments to the MDEQ on the RI/FFS. After MDEQ finalized the RI/FFS Report, the U.S. EPA then became the lead-enforcement agency responsible for identifying a preferred remedial alternative in the Proposed Plan and for documenting the selected remedial alternative in the ROD.

The State concurs with the selection of Sub-alternative 2C for OU2, but it also supports an enhanced remedy that would incorporate the Kalamazoo River Trustee Councils' restoration goals for OU2. The State's concurrence letter and the Kalamazoo River Trustee Councils' restoration goals, as described in its August 19, 2005 letter, are included in the Administrative Record for OU2.

10.9 Community Acceptance

During the public comment period, a majority of the local community supported Sub-alternative 2C but also supported Alternatives 3 and 4. Some citizens suggested that Alternative 4 should be combined with components of Sub-alternatives 2B and 2C as being the most acceptable and aesthetically pleasing to the local community. The community does not consider Alternative 1 as desirable because no action would be taken and PCB-contaminated materials would remain permanently at OU2. Sub-alternative 2A is also not desirable to the community because citizens strongly object to the use of more sheet pile along the Kalamazoo River. A summary of all public comments can be found in the Responsiveness Summary in Part III to this ROD.

11.0 Principal Threat Wastes

The NCP establishes an expectation that U.S. EPA will use treatment to address principal threat wastes wherever practicable. Principal threat wastes are source materials that are considered highly toxic or highly mobile, that cannot be reliably contained, or present a significant risk to human health or the environment. Low level threat wastes are those source materials that generally can be reliably contained and that would present only a low risk in the event of release. They include source materials that exhibit, among other things, low mobility in the environment.

There are no principal threat wastes at OU2. PCB-contaminated material within the landfills and adjacent areas are not highly mobile since the PCBs readily bind to clay materials used in the processed paper, are of low solubility, and have a low permeability (8×10^{-7} cm/sec), which is equivalent to a flexible membrane liner used at regulated landfills. Additionally, the NCP establishes an expectation that U.S. EPA will use engineering controls, such as containment, for

wastes that pose a relatively low long-term threat. Residuals at OU2 can be reliably contained under a landfill cap, and long-term O&M can be performed to ensure the reliability of the cap, thereby further reducing the potential for mobility of PCB-contaminated material into the environment.

12.0 Selected Remedy

Alternative 2, with stabilization option 2C (Sub-alternative 2C) is the selected remedy for OU2. This alternative consists of consolidation and containment of PCB-contaminated materials, creating a setback (or buffer zone) from the Kalamazoo River at the Willow Boulevard Landfill portion of OU2, and re-grading and stabilizing the riverbanks using ecologically friendly materials at the Willow Boulevard Landfill to improve habitat quality. Sub-alternative 2C also allows the existing sheet pile wall at the A-Site Landfill portion of OU2 to remain in place. Adverse effects of the remedial action will be mitigated by backfilling excavation areas to grade with clean soil and establishing a vegetative cover over the area. All identified wetland areas where remediation occurs will be restored back to a wetland area after remediation. Additionally, long-term maintenance, institutional controls to restrict public access, and groundwater monitoring will be implemented. The remedial action will reduce or eliminate the risk to human health and ecological receptors by preventing exposure to PCB-contaminated materials, and will reduce potential PCB migration (via erosion or surface water runoff) into the Kalamazoo River and adjacent areas. Sub-alternative 2C meets the threshold criteria, protection of human health and the environment, and compliance with ARARs. Sub-alternative 2C also provides the best balance among the balancing criteria, and a majority of the local community accepts the selected remedy, as expressed in the written comments received on the Proposed Plan.

12.1 Summary of the Rationale for the Selected Remedy

The main factors influencing U.S. EPA in its selection of Sub-alternative 2C include:

- 1) The risk to human health and ecological receptors will be reduced or eliminated by preventing exposure (through excavation, consolidation, and containment) via direct contact with PCB-contaminated materials and further erosion of PCB contaminated material into the Kalamazoo River and adjacent areas;
- 2) Implementation of institutional controls will prevent future exposure to PCB-contaminated material by restricting public access to OU2;
- 3) Long-term maintenance and groundwater monitoring will assess the integrity and effectiveness of the overall remedy;
- 4) Sub-alternative 2C is as equally protective of human health and as compliant with ARARs as remedial Alternatives 3 and 4, but it costs significantly less than those Alternatives. Additionally, while Sub-alternative 2B costs only 10% more than Sub-

Alternative 2C, it does not consider the community's objection to the addition of more sheet pile along the Kalamazoo River; and

- 5) Sub-alternative 2C could be enhanced to include either the complete removal and off-site disposal of PCB-contaminated material (Alternative 3), or partial removal and onsite consolidation (Alternative 4) as part of a compensatory action under a Natural Resource Damage Claim by the Trustee Council.

12.2 Description of the Selected Remedy

The remedial action for OU2 addresses papermaking residual, soil, and sediment contaminated with PCBs. As directed by the selected remedy, PCB-contaminated material will be excavated from adjacent areas and consolidated with existing residuals at the A-Site Landfill. At the Willow Boulevard Landfill, a setback will be created and a new ecologically friendly dike installed to improve habitat along the river. The setback distance was assumed to be 50 feet, but the actual distance will be determined during the design phase of the remedy. The setback and dike will physically separate the Willow Boulevard Landfill from the Kalamazoo River and prevent the transport of PCBs into the Kalamazoo River. In places where no adequate dike exists, an earthen berm will be constructed along the perimeter of the Willow Boulevard Landfill to provide a separation between the landfill and adjacent residences.

At the A-Site Landfill, the existing sheet pile that separates the landfill from the river will remain in place. In places where sheet pile has not been installed, bank stabilization will include limited excavation and re-grading of dike soils to achieve a stable slope and placing a zone of rip-rap at the toe of the dike to prevent erosion. A cap will be constructed and installed over both the Willow Boulevard and the A-Site Landfills. The cap will physically isolate and contain residuals in place, thereby removing the risk to human health and ecological receptors by preventing exposure to PCB-contaminated materials. The cover will minimize infiltration of rainwater through the landfills and prevent erosion and migration of PCBs from the landfills into the Kalamazoo River.

Institutional controls (fence with posted warning signs and deed restrictions) will prevent public access to the property and prevent the public's exposure to contaminated materials. Long-term maintenance of the components of the remedy is also required. If contaminants are present in groundwater at concentrations that present a risk to public health or ecological receptors, then a groundwater cleanup remedy may be required, but that remedy will be done under a separate U.S. EPA action. The specific details on how the remedy (access roads, haul road, staging areas, grubbing and clearing, etc.) will be implemented will be developed during the design phase of the remedy and approved by U.S. EPA.

Following completion of excavation activities, areas affected by construction activities will be mitigated by backfilling excavation areas to grade with clean soil and restored by establishing a vegetative cover. The Area East of Davis Creek would also be restored back to a wetland area.

The restoration approach for areas outside the landfill boundary and for the Area East of Davis Creek, which is a State regulated wetland, will be different from the restoration approach of the landfills. The specific restoration approach for each area of OU2 will be determined during the design phase. Periodic monitoring and necessary maintenance of the restored areas also will be conducted to assess the effectiveness of the stabilization and re-vegetation measures.

During implementation of the remedy, appropriate engineering controls (such as dust control, soil erosion control, and sedimentation control measures) will be conducted, as determined during the design phase, to mitigate short-term effects during the cleanup. Environmental monitoring (such as air monitoring and surface water monitoring) also will be conducted, as determined during the design phase, to evaluate short-term impacts from the construction activities and respond to them as needed. Georgia-Pacific will be responsible for the implementation, maintenance, and monitoring of all aspects of the selected remedy including but not limited to, implementing institutional controls.

12.3 Summary of the Estimated Remedy Costs and Time Required for Implementation

Assuming a 50-foot setback distance, the estimated capital cost for the selected remedy is \$6.57 million, while the O&M cost is approximately \$399,000 per year, including costs associated with long-term groundwater monitoring, for a total O&M cost of approximately \$4.95 million (based on a 30-year present worth analysis). The total project present worth cost is \$11.5 million. Construction activities are expected to take two years to complete. A detailed cost estimate for the selected remedy can be found in Attachment 2 to this ROD.

12.4 Expected Outcomes of the Selected Remedy

The selected remedy is expected to meet the RAOs for OU2 by eliminating exposure to PCB-contaminated material exceeding Part 201 Commercial II/Industrial (16 mg/kg) and Residential (4 mg/kg) cleanup criteria, for the protection of human health, and/or the NOAEL/LOAEL range (6.5 mg/kg to 8.1 mg/kg) established in the BERA, for the protection of ecological receptors. The selected remedy is also expected to meet the RAOs for OU2 by eliminating the potential migration of PCBs from the landfills and adjacent areas (via erosion or surface water runoff) into the Kalamazoo River. It will additionally meet the RAOs by eliminating exposure to PCB-contaminated sediments located in OU2 wetland areas that may present an unacceptable risk to consumers of the fish. These cleanup standards are protective of human health and ecological receptors. At the completion of the remedial action, OU2 will not be available for unlimited use and unrestricted exposure.

13.0 Statutory Determinations

Under CERCLA Section 121 and the NCP, remedies selected for Superfund sites are required to be protective of human health and the environment, comply with applicable or relevant and appropriate requirements (unless a waiver is justified), be cost effective, and utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the

maximum extent practicable. In addition, CERCLA includes a preference for remedies that employ treatment that permanently and significantly reduces the toxicity, mobility or volume of hazardous wastes as a principal element and a bias against off-site disposal of untreated wastes. The following sections discuss how the selected remedy for OU2 meets these statutory requirements.

13.1 Protection of Human Health and the Environment

The selected remedy will reduce or eliminate the risk to human health and ecological receptors by preventing exposure to PCB-contaminated materials and reducing PCB transport into the Kalamazoo River. This will be accomplished through consolidation of residuals, creation of a setback, construction of a new dike and stabilization of existing dikes, installment of erosion control measures, placement of a cap, establishment of institutional controls, and establishment of long-term maintenance and groundwater monitoring. Bank stabilization and erosion control measures will reduce the potential for bank failure and subsequent transport of PCB-contaminated material into Davis Creek and/or the Kalamazoo River. The remedy will also eliminate the potential for direct contact with contaminated materials by physically isolating and containing contaminated materials from adjacent areas and the residuals within the landfills. The long-term effect on riparian habitat will be reduced, as there will be no new installation of sheet pile. Of critical importance to meeting this criterion (prevent bank failure and transport to the river) is construction of the new bank to achieve a separation between surface water and waste and protect the landfill cover and contents from a 100 year flood event.

13.2 Compliance with ARARs

The ARARs and TBCs identified for a site are categorized into three types: chemical-specific, action-specific and location-specific. Chemical-specific ARARs establish the acceptable amounts or concentrations of a chemical that may be found in, or discharged to, the ambient environment. Action-specific ARARs are technology- or activity-based performance or design requirements associated with the potential remedial activities being considered. Location-specific ARARs establish requirements that protect environmentally sensitive areas and other areas of special interest. The primary chemical specific, action specific, and location specific ARARs for the selected remedy are discussed, below, in sections 13.2.1 and 13.2.2. The selected remedy will comply with the identified federal and/or state ARARs listed below. Where acts or statutes are cited for ARARs, it includes the relevant and appropriate promulgated federal or state regulations or rules.

13.2.1 Chemical-Specific ARARs

The primary chemical-specific ARARs for OU2 include:

Federal Chemical-Specific ARARs:

- 40 C.F.R. § 761.61 et seq., TSCA PCB Remediation Waste Rule: The federal regulations in 40 C.F.R. § 761.61 contain standards for the cleanup and disposal of PCB remediation waste. PCB remediation waste is a waste containing PCBs because of a spill, release, or other unauthorized disposal at a concentration equal to or greater than 50 mg/kg.

The remedial alternative selected in this ROD allows the disposal of PCB remediation waste at the A-Site Landfill portion of OU2, by means of the risk-based disposal method provided in 40 CFR § 761.61(c). The U.S. EPA Superfund Program Director, in consultation with the TSCA program, has determined that disposal of PCB-contaminated residuals and/or materials greater than 50 mg/kg at the A-Site Landfill will not pose an unreasonable risk of injury to public health or the environment.

The conclusion that the consolidation and capping disposal method component of the selected remedy does not pose an unreasonable risk of injury to human health or to the environment is supported by all of the data collected in the RI. As an initial matter, most of the PCB-contaminated material that will be disposed of in the A-Site Landfill is not, by definition, PCB remediation waste because the level of PCB contamination is below 50 mg/kg. The contaminated residuals in both landfills have had the opportunity to naturally settle for many years. The base of the contaminated residuals will have had time to dewater and establish a dense low hydraulic conductivity zone. Tests show that the residuals are relatively impermeable. Moreover, the proposed cap will ensure that terrestrial biota are no longer exposed to the PCB-contaminated wastes in the landfill. The sides and slopes of the landfill will be constructed to withstand a 100-year flood event. This construction standard, along with the berm that will be created around both landfills, should ensure that PCB-contaminated materials no longer erode into the Kalamazoo River or Davis Creek.

In summary, at OU2, the low-permeability of paper residuals within the A-Site Landfill, the low-permeability cover, construction of berms, long-term ground water monitoring, long-term maintenance, and institutional controls included in the selected remedy, provide protection to public health and the environment. Moreover, the above listed components of the selected remedy ensure that this alternative will achieve the TSCA ARAR by implementing a risk-based disposal method.

- Federal Water Pollution Control Act (WPCA): This federal statute contains guidelines for establishing test procedures for the analysis of pollutants. This act is applicable for the discharge to the Kalamazoo River of water from all dewatering activities that will occur during the remediation of OU2.
- Clean Water Act, Ambient Water Quality Criteria: The federal Clean Water Act establishes monitoring requirements for the discharge of waste treatment effluents to waters of the United States. Any surface water runoff generated during excavation must meet Federal surface water quality standards before being discharged back to the river.

These standards are applicable to the surface water discharges resulting from excavation and dewatering of soils, sediments, or residuals at OU2.

State Chemical-Specific ARARs:

- Part 201 Environmental Remediation of the NREPA: This State chemical-specific standard, under Part 201 Environmental Remediation of the NREPA, particularly in Sections 2012a and 2012b, specifies that a remedial action shall achieve a degree of protectiveness appropriate for the use of the property. Sections 2012a and 2012b contain health-based soil standards for residential and industrial/commercial land use. Additionally, Part 201 provides for the identification, risk assessment, evaluation, and remediation of contaminated sites within the state. The statute and its rules provide that remedial actions shall be protective of human health, safety and welfare, and the environment of the state. These standards are applicable at OU2.
- Part 31, Water Resources Protection, of the NREPA: Part 31 of the NREPA establishes effluent standards in accordance with the federal WPCA and the CWA, and also establishes rules specifying standards for several water quality parameters including PCBs. Part 31, Water Resources Protection, of the NREPA, would be applicable to the discharge of water from the site to the Kalamazoo River.

13.2.2 Action- and Location-Specific ARARs

The primary action- and location-specific ARARs for OU2 are:

Location-Specific ARARs:

State Location Specific ARARs:

- Part 115, Solid Waste Management, of the NREPA: Part 115, Solid Waste Management, of the NREPA contains regulations regarding the construction, operation, and closure of sanitary landfills, solid waste transfer facilities, and solid waste processing plants.

Action-Specific ARARs:

Federal Action-Specific ARARs:

- Clean Water Act: The CWA establishes site-specific pollutant limitations and performance standards that are designed to protect surface water quality. Types of discharges regulated under the CWA include discharge to surface water, indirect discharge to a publicly owned treatment works (POTW), and discharge of dredge or fill materials to United States waters. This act is relevant to the treatment and discharge of water to the Kalamazoo River or POTW from the dewatering operations.

- Rivers & Harbor Act: The Rivers & Harbor Act prohibits unauthorized obstruction or alteration of any navigable water in the United States (dredging, fill, cofferdams, etc.). It also requires that federal agencies, where possible, avoid or minimize adverse impacts of federal actions upon wetlands and floodplains. Remedial activities, which may require a permit to perform, must be conducted in such a way that they will avoid unacceptable obstruction or alteration of the Kalamazoo River channel.
- The Clean Air Act: The Clean Air Act establishes requirements for constituent emission rates in accordance with national ambient air quality standards. Excavation and cap construction activities will be regulated by the Clean Air Act.
- TSCA: TSCA's PCB Remediation Waste Rule, 40 CFR, Section 761.61 provides the requirements for the disposal of PCB-contaminated wastes, and would therefore be applicable to this remedy.

State Action-Specific ARARs:

- Part 91, Soil Erosion and Sedimentation Control, of the NREPA: This part regulates earth changes, including cut and fill activities which may contribute to soil erosion and sedimentation of surface water. Part 91, Soil Erosion and Sedimentation Control, of the NREPA would apply to any such activity where more than one acre of land is affected or the regulated action occurs within 500 feet of a lake or stream. Part 91 of the NREPA would be applicable to the cap construction activities since these actions could impact the Kalamazoo River, which is less than 500 feet from OU2.
- Part 301, Inland Lakes and Streams, of the NREPA: Part 301, Inland Lakes and Streams, of the NREPA regulates the dredging or filling of lake or stream bottoms. Activities associated with the selected remedy, sediment removal, and berm stabilization are regulated under this part due to the proximity of OU2 to the Kalamazoo River.
- Part 115, Solid Waste Management, of the NREPA: Part 115, Solid Waste Management, of the NREPA contains regulations regarding the construction, operation, and closure of sanitary landfills, solid waste transfer facilities, and solid waste processing plants.
- Part 31, Water Resources Protection, of the NREPA: Part 31, Water Resources Protection, of the NREPA establishes rules regarding water and wastewater discharges. This is applicable for discharge of waters to the Kalamazoo River. Part 31, Water Resources Protection, of the NREPA also includes the rules regarding permit requirements for discharges.
- Part 55, Air Pollution Control, of the NREPA: Rules prohibiting the emission of air contaminants in quantities which have injurious effects on human health, animal life, plant life of significant economic value, and/or property are established in Part 55, Air Pollution Control, of the NREPA. This would be applicable to excavation and cap

construction activities. During the construction of the RA, the total emissions from the entire site shall comply with the secondary risk screening level (SRS�) for PCB. The SRS� for PCB based upon an incremental cancer risk of 1 in 100,000 is 0.02 ug/m³ (micrograms per cubic meter) applied at OU2 perimeter. At a perimeter location where the adjacent property is an industrial property or a public roadway, Rule 225 (3)b allows for compliance with the SRS� multiplied by a factor of 10. Where the adjacent property is not an industrial property or public roadway, the perimeter location shall comply with the SRS�.

- Michigan Occupational Safety and Health Act 154 (MIOSHA): MIOSHA establishes the rules for safety standards in the work place and is applicable to the remediation activities.
- Part 201, Environmental Remediation, of the NREPA: Part 201, Environmental Remediation, of the NREPA provides for the evaluation and remediation of contaminated sites within the state. The U.S. EPA has determined that Part 201, Environmental Remediation, of the NREPA is applicable to OU2. Part 201, Environmental Remediation, of the NREPA requires that remedial actions be protective of human health, safety and welfare, and the environment.
- Part 303, Wetland Protection, of the NREPA: Part 303, Wetland Protection, of the NREPA regulates activities conducted in wetlands as well as mitigation of wetlands.

13.3 Cost Effectiveness

U.S. EPA has determined that the selected remedy for OU2 is cost effective. A cost-effective remedy in the Superfund program is one where the costs are proportional to the overall effectiveness of the remedy. U.S. EPA evaluated the overall effectiveness of the potential remedial alternatives for OU2 presented in the FFS by evaluating the following three criteria: long-term effectiveness and permanence, reduction in toxicity, mobility and volume through treatment, and short-term effectiveness. U.S. EPA then compared the overall effectiveness to cost to determine whether an alternative is cost effective. Of the remedial alternatives evaluated for OU2, Alternative 2C (the selected remedy) provides a high degree of overall effectiveness, and it is cost effective compared to the other alternatives that provide the same degree of effectiveness. Alternative 2C costs 75 percent less than Alternative 3, which is complete removal and off-site disposal, and 26 percent less than Alternative 4, which reduces the footprint of the landfill by removing the Willow Boulevard Landfill and consolidating the residuals into the A-Site Landfill. Alternatives 2A, 2B, and 2C provide the same degree of overall effectiveness, but Alternative 2C is 12 percent less than Alternative 2A, and 8 percent less than Alternative 2B.

13.4 Utilization of Permanent Solutions and Alternative Treatment Technologies or Resource Recovery Technologies to the Maximum Extent Practicable

U.S. EPA believes that the selected remedy represents the maximum extent to which permanent solutions and treatment technologies can be utilized in a practical and cost-effective manner at OU2, and represents the best balance of trade-offs among the alternatives with respect to the primary balancing criteria. Treatment technologies are not a component of the selected remedy because it would be impracticable and not cost-effective to treat the PCB-contaminated material when a suitable and protective onsite containment option, the A-Site Landfill, is available for use at OU2. As discussed in Section 10.0 of this ROD, the selected remedy (Alternative 2C) provides a high degree of long-term protectiveness and represents a permanent solution for OU2 while being cost-effective.

13.5 Preference for Treatment as a Principal Element

As discussed in Section 11, there are no principal threat wastes at OU2. Therefore, U.S. EPA's statutory preference for treatment of principal threats does not apply.

13.6 Five-Year Review Requirements

Because the remedy selected in this ROD will result in hazardous substances, pollutants or contaminants remaining at OU2 above levels that allow for unlimited use and unrestricted exposure, a statutory review will be conducted within five years after initiation of remedial action to ensure that the remedy is, or will be, protective of human health and the environment.

14.0 Documentation of Significant Changes

The Proposed Plan for OU2 was released for public comment on July 15, 2005. The Proposed Plan identified the preferred alternative as Alternative 2C - Consolidation and Containment of Select Materials, Re-Grade/Stabilize Banks using Ecologically Friendly Materials with a Setback at Willow Boulevard Landfill. The existing A-Site sheet piling will be retained under this remedy. U.S. EPA reviewed all written and verbal comments submitted during the public comment period and determined that no significant changes to the selected remedy, as originally identified in the Proposed Plan, were necessary or appropriate.

PART III: RESPONSIVENESS SUMMARY

1.0 Background

The United States Environmental Protection Agency (U.S. EPA) met the public participation requirements of Section 113(k)(2)(I-v) and 117 of CERCLA during the remedy selection process for the Willow Boulevard/A-Site Landfill Operable Unit 2 (OU2). These sections require U.S. EPA to respond "...to each of the significant comments, criticisms, and new data submitted in written or oral presentations" on U.S. EPA's proposed cleanup plan for a site. This responsiveness summary addresses the comments and concerns expressed by state agencies, community groups, residents and the Potential Responsible Party (PRP) in written and oral comments during the public comment period for OU2.

1.1 Information Repository

The U.S. EPA maintains information repositories containing the administrative record file for the Allied Paper Inc./Portage Creek/Kalamazoo River Superfund Site and other site documents and reports at several locations (Table 1). U.S. EPA also maintains an administrative record file for the site at the U.S. EPA Region 5 Superfund Division Records Center, 77 W. Jackson, Chicago, Illinois, 60604. The public can access all major reports and documents about OU2 and the other operable units of the site at these repositories. U.S. EPA also posts information about the Allied Paper Inc./Portage Creek/Kalamazoo River site on the internet at www.epa.gov/region5/sites and www.epa.gov/region5/sites/kalproject.

Information Repositories/Administrative Record Locations for Allied Paper Inc./Portage Creek/Kalamazoo River Superfund Site (OU1 -OU7)

| |
|--|
| Kalamazoo Public Library, 315 South Rose, Kalamazoo, MI |
| Waldo Library, Western Michigan University, 1903 West Michigan Avenue, Kalamazoo, MI |
| Charles Ransom Library, 180 South Sherwood, Plainwell, MI |
| Otsego District Library, 219 South Farmer Street, Otsego, MI |
| Allegan Public Library, 331 Hubbard Street, Allegan, MI |
| Saugatuck-Douglas Library, 10 Mixer Street, Douglas, MI |

A complete index of all the documents in the administrative record for OU2 is included in Appendix A of this ROD. The public may request an electronic copy (CD format) of the entire administrative record file, or specific documents in the administrative record from the U.S. EPA Region 5 Superfund Division Records Center.

1.2 Public Notices, Fact Sheets and Public Comment Period

U.S. EPA mailed fact sheets outlining the proposed cleanup plan for OU2 to local residents and other interested parties on U.S. EPA's community involvement mailing list on July 15, 2005. U.S. EPA announced its proposed plan for OU2 and invited the public to comment on its plan in a notice in the Kalamazoo Gazette on July 26, 2005. The notice in the Kalamazoo Gazette included information about U.S. EPA's proposed cleanup for OU2, the other remedial alternatives that U.S. EPA considered, the upcoming public meeting, the availability of OU2 documents in the information repositories and the public comment period. U.S. EPA also posted a copy of the OU2 proposed plan on the internet with the other information about the Allied Paper Inc./Portage Creek/Kalamazoo River site at www.epa.gov/region5/sites/kalproject.

The initial public comment period for the OU2 cleanup plan was from July 15, 2005 to August 15, 2005. During the comment period, U.S. EPA received several requests to extend the comment period. As a result, the comment period was extended to September 16, 2005. U.S. EPA published notices announcing the public comment period extension in the Kalamazoo Gazette on August 14, 2005 and in the Allegan County News on August 18, 2005.

1.3 Public Meeting and Hearing

U.S. EPA presented its proposed plan to residents, local officials, community groups and other interested parties at a public meeting on August 3, 2005. U.S. EPA discussed the other remedial alternatives that U.S. EPA considered at the meeting and answered questions about the site. The public meeting was held at the Kalamazoo Public Library in Kalamazoo. About 13 people attended the meeting including representatives from the MDEQ, the Lakewood Neighborhood Association (LNA) and the Kalamazoo River Protection Association (KRPA). A public hearing followed the meeting, during which U.S. EPA accepted oral comments on its proposed plan. A court reporter transcribed the oral comments, and this transcript and the written comments U.S. EPA received during the comment period are part of the administrative record for OU2.

2.0 Summary of Public Comments

U.S. EPA received 6 oral comments and 29 written comments on its proposed plan for OU2. The comments were submitted by government agencies including the Kalamazoo River Trustee Council for Natural Resource Damage Assessment and Restoration (Trustee Council) and the MDEQ; community groups including the Kalamazoo Environmental Council (KEC), the Kalamazoo River Watershed Council (KRWC), KRPA, and the LNA; Georgia Pacific, the PRP for OU2; and other interested parties.

About three-fourths of the comments, including comments from the Trustee Council, the KEC, KRWC and the KPRA, support a cleanup plan for OU2 (referred to in this Responsiveness Summary as Alternative 5) that was not evaluated in the Michigan Department of Environmental Quality's (MDEQ) Remedial Investigation/Focused Feasibility Study (RI/FFS) and that was not considered by the U.S. EPA. MDEQ concurs with Alternative 2 together with bank stabilization

option C (Sub-Alternative 2C) as the selected remedy for OU2, but it also supports Alternative 5 as a way to most efficiently combine remediation with the Trustee Council's restoration goals.

Although there were some variations, Alternative 5 basically contains some elements of Alternative 4 and Sub-alternatives 2B and 2C, and it includes:

- Moving the PCB-contaminated material from the Willow Boulevard Landfill to the A-Site Landfill, and
- Removing the sheet pile at the A-Site Landfill and pulling back the A-Site Landfill waste to create a clean setback or "buffer zone" from the Kalamazoo River with an ecologically-friendly dike.

Alternative 5 variations include:

- Specifying the setback width at the A-Site Landfill of 150 feet;
- Installing a leachate/groundwater collection system;
- Removing the most contaminated materials or "hot spots" for off-site disposal at a Toxic Substances and Control Act (TSCA) landfill;
- Dredging river sediments between OU2 and the King Highway Landfill Operable Unit;
- Several comments specified a cleanup level of 0.3 mg/kg PCB;
- Using hydraulic dredging and Geotube containment for sediment transport;
- Vaulting and covering the A-Site Landfill with long-term protective synthetic geomembranes, concrete, and natural layers of soil to prevent surface runoff;
- Designing the remedy to remain effective for 50 years or longer and to withstand a 100- year flood event or any conceivable flood event; and
- Installing a concrete barrier around Davis Creek.

For the other remedial alternatives, five comments supported U.S. EPA's proposed cleanup remedy (Sub-alternative 2C); one comment supported Alternative 3 (complete excavation and off-site disposal); and one comment supported Alternative 4 (excavate OU2, consolidate, and contain the OU2 materials at the A-Site Landfill underneath a cap).

Additional comments from residents, community groups and other interested parties about U.S. EPA's proposed plan and the final selected remedial action include:

- Objections to U.S. EPA allowing landfills next to rivers/leaving PCB-contaminated material in a floodplain;
- Objections to disposing PCB-contaminated material from the Georgia-Pacific Kalamazoo Mill and former Hawthorne Mill properties at the A-Site Landfill;
- Challenging U.S. EPA's use of a TSCA waiver;
- Stabilizing/solidifying PCB-contaminated materials prior to land-filling;
- U.S. EPA's plans for a 500 year flood event or flood events greater than a 100 year flood event;

- Truck traffic through the residential area and possible health effects from wind-borne material;
- Fencing concerns;
- Concerns about designing the ecologically-friendly dike;
- The likeliness of any short-term effects from excavating the landfills as long as proper procedures are followed;
- Uncertainties about groundwater contributing PCBs to the river, groundwater monitoring and frequency;
- Ensuring Georgia-Pacific provides long-term maintenance;
- Implementing deed restrictions;
- Safety to people in adjacent neighborhoods; and
- Ensuring PCB-contaminated materials will not enter the St. Joseph River during the cleanup.

Other comments from residents, community groups and other interested parties addressed:

- Health concerns;
- Concerns about the cleanup taking so long; further studies being pointless and useless;
- Utilizing Natural Resource Damage Assessment monies to remediate natural resource damages simultaneously with the cleanup; making Natural Resource Damage Assessment dollars attributable to OU2 a part of the final ROD and settlement so the public and stakeholders will have final resolution for this stretch of river;
- Deadlines for U.S. EPA to reach agreements with Georgia-Pacific on OU2 and the Kalamazoo and former Hawthorne Mill properties;
- Ensuring Fish Consumption Advisory Pamphlets are in clear view and readily available at meetings;
- Requiring Georgia-Pacific to regularly inspect and maintain fish advisory signs along the river;
- Checking that the administrative record is up to date in all information repositories;
- Economic consequences of PCB contamination in the river; cleaning up the Kalamazoo River in an appropriate and timely manner so that people can eat fish from the river;
- Removing the dams from the Kalamazoo River to allow safe passage along the river;
- Request to open the King Highway Landfill ROD to provide a natural buffer between the river and the King Highway Landfill;
- Making more information available to the public; and
- Comments that PCBs do not cause cancer and that the negative effects of PCBs on Kalamazoo River wildlife has been exaggerated.

Comments from the PRP included:

- Applying the 0.33 mg/kg PCB default sediment criteria protective of fish consumption to surface soil and other areas infrequently inundated;
- Rewording the description of historical disposal activities at OU2;

- Allowing the limited use of sheet pile along OU2 where erosive forces of the river are present;
- The benefits and drawbacks of environmentally friendly techniques;
- Setback width and how the width of the setback will be determined;
- No further investigation and remediation of the AMW-3A area; and
- Not specifying a contingent groundwater remedy in the ROD.

A summary of the comments U.S. EPA received during the public comment period and U.S. EPA's responses are below. The comments and U.S. EPA's responses are addressed in three sections:

- 1) Community comments on U.S. EPA's proposed plan and cleanup (Section 2.1)
- 2) Other community comments and concerns (Section 2.2)
- 3) PRP comments (Section 2.3).

2.1 Proposed Plan and Cleanup Comments (PP/C Comments)

Comment PP/C-1: *EPA should select a cleanup remedy that fully restores the floodplain at the WB site and restores the bank around the A-Site to more natural conditions. Although there are some variations Alternative 5 contains elements of Alternative 4, Alternative 2B and Alternative 2C. Alternative 5 involves moving the PCB-contaminated material from the WB site to the A-Site, removing the sheet pile at the A-Site, pulling back the A-Site waste to create a clean setback or "buffer zone", and constructing an ecologically-friendly dike around the A-Site. Alternative 5 would be an effective way to combine remediation with the Trustee Council's restoration goals for the site, would provide additional habitat along the river, and would be more aesthetically pleasing.*

U.S. EPA Response PP/C-1: U.S. EPA appreciates the public's development and support of Alternative 5. Alternative 5 is supported by about three-fourths of the comments including comments from the Trustee Council, the KEC, KRWC and the KPRA. The MDEQ concurs with Sub-alternative 2C as the selected remedy for OU2 but also supports Alternative 5 as a way to most efficiently combine remediation with the Trustee Council's restoration goals.

U.S. EPA gave Alternative 5 serious consideration before selecting Sub-alternative 2C as the OU2 remedy. U.S. EPA's analysis is below.

Sub-alternative 2C and Alternative 5 both use containment to reduce the mobility of contaminants to the environment. Both alternatives protect human health and the environment and comply with ARARs. Both alternatives rely on institutional controls, monitoring, and long-term maintenance to achieve long-term effectiveness and permanence. By removing contaminated materials from the saturated zone at the Willow Boulevard Landfill, Alternative 5 would eliminate potential impacts to the Kalamazoo River through groundwater transport in this area. However, groundwater samples collected from a replacement well (WMW-3AR) at the Willow Boulevard Landfill during the most recent sampling event (2000) did not contain any

PCBs. The long-term groundwater monitoring included with Sub-alternative 2C will detect whether any PCBs are mobilizing in groundwater. If contaminants are present in groundwater at concentrations that present a risk to public health or wildlife, then a groundwater cleanup remedy may be required, but that remedy will be done under a separate U.S. EPA action.

Large-scale excavation below the water table makes Alternative 5 less implementable than Sub-alternative 2C. Short-term risks associated with excavating and transporting the Willow Boulevard material to the A-Site Landfill would also be higher with Alternative 5 than Sub-alternative 2C. These risks however, could be minimized through proper work practices and controls. The cost tables for Sub-alternatives 2B and 2C and Alternative 4 in the RI/FFS indicate that Alternative 5 would cost about \$2 million to \$3 million more than Sub-alternative 2C.

U.S. EPA agrees that Alternative 5 would be an effective way to integrate the Trustee Council's restoration goals with the site cleanup. Removing the sheet pile at the A-Site Landfill would also create more natural conditions along this section of the river and be more aesthetically pleasing to the community. However, CERCLA and the NCP do not give U.S. EPA the legal authority to select cleanup remedies based on restoration objectives or aesthetics. U.S. EPA's legal authority is limited to protecting human health and the environment and to selecting remedies consistent with U.S. EPA's evaluation criteria.

U.S. EPA is selecting Sub-alternative 2C as the remedy for OU2 because Sub-alternative 2C meets U.S. EPA's threshold criteria for selected remedies (i.e., must protect human health and the environment and comply with ARARs) and provides the best balance of tradeoffs among EPA's balancing criteria (long-term effectiveness and permanence; reduction of toxicity, mobility or volume through treatment; short-term effectiveness, implementability and cost). The MDEQ supports Sub-alternative 2C as the selected remedy for OU2. Community acceptance, while an important consideration to U.S. EPA, is a modifying, not a primary balancing criteria. Because Sub-alternative 2C meets the remedial action objectives for OU2 and meets U.S. EPA's evaluation criteria at a significantly lower cost than Alternative 5, U.S. EPA cannot select Alternative 5 as the OU2 remedy.

U.S. EPA cannot require a remedy to meet the Trustee Council's restoration goals or be aesthetically pleasing but agrees that it would be more cost-effective for the PRP to integrate the Trustee Council's restoration goals into the final remedial design and construction. U.S. EPA is willing to work with the PRP and the Trustee Council during the remedial design phase of the remedy to develop a final design that incorporates the Trustee Council's restoration objectives and meets or exceeds the requirements of the OU2 ROD and Consent Decree

Comment PP/C-2: *The ROD should specify a setback width of 150 feet or of 100 to 200 feet.*

U.S. EPA Response PP/C-2: U.S. EPA does not agree with this comment. U.S. EPA's remedial action objectives are to provide long-term protection of human health and the environment and to comply with ARARs. At the Willow Boulevard Landfill, this will be done by physically separating the waste from the river and protecting the landfill cap and underlying

waste from a 100 year flood event. U.S. EPA has not determined the setback width needed to meet these requirements. The final setback width will be determined during the remedial design using the procedures, calculations and/or approaches in the U.S. EPA-approved Remedial Design Work Plan or other U.S. EPA-approved planning documents, developed during the remedial design phase of the remedial action. The final setback width may be 50 feet, 100 to 200 feet or something more or less. The final setback width will be approved by U.S. EPA in consultation with MDEQ prior to construction. As indicated in U.S. EPA Response PP/C-1, U.S. EPA's selected remedy (Sub-alternative 2C) includes leaving the sheet pile at the A-Site Landfill in place. A setback will not be required at the A-Site Landfill.

Comment PP/C-3: *EPA's selected remedy should include a leachate/groundwater collection system.*

U.S. EPA Response PP/C-3: U.S. EPA disagrees with this comment. Most of the waste at OU2 is above the water table, and the waste will be physically separated from the river by a clean fill setback at the Willow Boulevard Landfill, and by sheet pile, clean fill and bank stabilization at the A-Site Landfill. The low permeability cover system to be constructed over the landfills will further reduce infiltration of precipitation through the residuals over time, thereby reducing the potential for leachate generation and groundwater transport of PCBs and the other chemicals detected in site groundwater above MDEQ generic GSI criteria. U.S. EPA's selected remedy includes long-term groundwater monitoring. If contaminants are present in groundwater at concentrations that present a risk to public health or wildlife, then a groundwater cleanup remedy, which may include the installation of a leachate/groundwater collection system, may be required.

Comment PP/C-4: *EPA's selected remedy should include removing the most contaminated material or "hot spots" from the WB landfill and/or A-Site for off-site disposal at a TSCA landfill.*

U.S. EPA Response PP/C-4: U.S. EPA disagrees with this comment. U.S. EPA's selected remedy was developed and will be designed to protect human health and the environment from all PCB-contaminated material at OU2 and to comply with ARARs. Contaminated material, including hot spots, will be physically isolated underneath a landfill cap thereby eliminating the potential exposure to people. TSCA regulations, which apply to PCB-contaminated material equal to or greater than 50 mg/kg, allow the use of a risk-based disposal method for PCBs (see 40 CFR § 761.61(c)). The U.S. EPA Region 5 Superfund Division Director, in consultation with the TSCA program, determined that disposal of remediation waste at the A-Site Landfill will not pose an unreasonable risk of injury to public health or the environment. See the Declaration in Part I of this ROD.

Comment PP/C-5: *The river materials between the WB/A-Site and the Kings Highway landfill or past the Kings Highway landfill should be dredged as part of the OU2 remedy. Several comments specified a cleanup level of 0.3 mg/kg.*

U.S. EPA Response PP/C-5: U.S. EPA does not agree with this comment. This ROD addresses the contamination at OU2 and adjacent areas. U.S. EPA will determine cleanup levels and appropriate remedial action for Kalamazoo River sediments in the ROD for OU5.

U.S. EPA's selected remedy for OU2 includes excavating contaminated sediment and soils in wetland areas located adjacent to the landfills including the Area South of A-Site Berm, the Willow Drainageway Area, and the Area East of Davis Creek. A sediment cleanup level of 0.33 mg/kg PCB will be applied to wetland areas that are inundated with water for a period of time such that the sediment-to-fish-to-consumer (people and mink) exposure pathway presents an unacceptable risk to consumers of fish. A scientifically valid indicator of wetland inundation period will be established during the design phase of the remedial action in order to determine where a sediment-to-fish-to-consumer exposure pathway in OU2 wetland areas presents an unacceptable risk to consumers of fish.

Comment PP/C-6: *Hydraulic dredging would allow the use of Geotube containment for transporting the most contaminated sediments.*

U.S. EPA Response PP/C-6: Geotubes are used for dewatering sediments with high water content. The remedy for OU2 does not involve dewatering of sediments. Sediments that will be removed as part of the OU2 remedy will be primarily from wetland areas that are seasonally inundated with flood water. The specific methods for excavating paper waste, sediment, and/or soil in adjacent wetland areas will be determined during the remedial design of the remedy and approved by U.S. EPA in consultation with the MDEQ. The sediments will be excavated and transported using methods that will minimize both the generation of contaminated air-borne dust, and the potential for contaminants to erode or be suspended during excavation.

Comment PP/C-7: *The landfills should be vaulted and covered with long-term protective synthetic geomembranes, concrete and natural layers of soil to assure no surface water runoff.*

U.S. EPA Response PP/C-7: The specific details of the landfill cap designs and materials to be used will be developed during the remedial design phase of the remedy and approved by U.S. EPA in consultation with the MDEQ. The cap will be designed with a flexible membrane liner. The flexible membrane liner (FML) would be supported by a 6 inch gas venting layer/soil cushion and protected by a minimum 2 foot soil drainage layer. The 2 foot drainage layer would provide lateral drainage of precipitation, minimize frost penetration into the cover system, and protect the FML from root penetration, ultraviolet light, and other degradation. The drainage layer would be covered by a minimum 6 inch top soil layer capable of supporting native plant growth. The sides and slopes of the landfill caps will be designed to withstand a 100 year flood event and ensure that drainage and surface water runoff is appropriately directed. The landfill caps will physically isolate and contain the contaminated material and reduce the potential for PCBs to migrate (by surface water runoff or erosion) from the landfill into the Kalamazoo River.

Comment PP/C-8: *EPA's selected remedy should be designed to be effective for 50 years or longer and to withstand a 100 year flood event or any conceivable flood event.*

U.S. EPA Response PP/C-8: The ROD requires that the OU2 remedy be designed to withstand a 100 year flood event and comply with all ARARs. During the design phase, the PRP may propose to use materials that are more durable than required and/or a design that will withstand a flood event greater than 100 years. U.S. EPA may approve such PRP proposals as long as the design remains consistent with the ROD. The selected remedy also includes regular maintenance and monitoring to ensure the remedy remains protective of human health and the environment over the long-term. The specific details concerning the remedy design, site inspections and maintenance will be developed during the remedial design phase of the remedy and approved by U.S. EPA in consultation with the MDEQ. The U.S. EPA conducts a statutory review of the site every five years to ensure the remedy remains protective of human health and the environment. U.S. EPA's first five-year review for OU2 will be five years from the start of construction.

Comment PP/C-9: *EPA should not allow landfills next to a river or select a remedy that leaves PCB-contaminated material in a floodplain. In 2001 almost 600 citizens, 28 community and environmental organizations and 22 local governments and officials advised EPA and MDEQ that the PCBs should be moved from the banks of the Kalamazoo River and stored in landfills outside the 500 year floodplain. A cap in a floodplain is not a long-term solution.*

U.S. EPA Response PP/C 9: U.S. EPA does not agree with this comment. U.S. EPA is not allowing new landfills to be constructed at OU2. U.S. EPA is working to physically isolate and contain the contaminated material at the two landfills that were constructed next to the river more than 40 years ago. The U.S. EPA, with concurrence from MDEQ, evaluated different cleanup alternatives including complete excavation and off-site disposal (Alternative 3) and pulling back the waste from the river's edge at both the Willow Boulevard and A-Site landfills (Sub-alternative 2B). U.S. EPA could not select Sub-alternative 2B or Alternative 3 as the OU2 remedy because Sub-alternative 2C is as equally protective of human health and the environment and is as compliant with ARARs as Sub-alternative 2B and Alternative 3, but the cost of Sub-alternative 2C is significantly lower (\$11.5 million for Sub-alternative 2C) compared to \$46 million for Alternative 3 and 12.7 million for Sub-alternative 2B.

Comment PP/C-10: *EPA should not allow the PCB-contaminated material from the Georgia Pacific Kalamazoo Mill and Hawthorne Mill sites to be disposed at the A-Site.*

U.S. EPA Response PP/C 10: U.S. EPA does not agree with this comment. The Georgia Pacific Kalamazoo Mill and Hawthorne Mill (OU7) are in close proximity to OU2 and are part of the Allied Paper Inc./Portage Creek/Kalamazoo River Superfund site. Coordinating cleanups between OU2 and OU7 is a timely and cost-effective way to address the contamination at the mill properties and meet overall project goals for the Allied Paper Inc./Portage Creek/Kalamazoo River Superfund site. The estimated 35,000 cubic yards of PCB-contaminated material excavated from the mill properties would add approximately 1 foot of material to the A-Site Landfill. U.S. EPA will still require the A-Site Landfill to meet all requirements in the OU2 ROD.

Comment PP/C-11: *How can EPA justify a TSCA waiver for wastes being brought to the A-Site from the Georgia Pacific Kalamazoo Mill and Hawthorne Mill sites? The waste would not be treated (stabilized/solidified) and could cause PCBs to leach into the groundwater and the Kalamazoo River. The exemption criteria in 40 CFR § 761.75 is not being met. The proposed disposal of these soils at the A-Site does not meet the technical requirements in 40 CFR § 761.75(b) because the hydrogeologic conditions are not being met, and a leachate collection system is not being installed as required by 40 CFR § 761.75(b)(7).*

U.S. EPA Response PP/C-11: The TSCA ARAR applicable to disposal of remediation waste at the A-Site Landfill is 40 C.F.R. § 761.61(c), which allows the use of a risk-based disposal method for regulated PCB-contaminated material. The Superfund Division Director has determined that the requirements of 40 C.F.R. § 761.61(c) have been met and that disposal of remediation waste at the A-Site Landfill will not pose an unreasonable risk of injury to human health or the environment.

If U.S. EPA reaches an agreement with Georgia Pacific, then the Kalamazoo Mill and Hawthorne Mill cleanup will be conducted as a separate action under U.S. EPA removal authority, not as part of the WB/A-Site ROD. U.S. EPA's authority to conduct the OU6 removal action, the details of the action, and a discussion of ARARs for the removal will be documented in a U.S. EPA report called an Action Memorandum.

Any mill wastes disposed of at the A-Site will be contained on top of the existing landfill materials above the water table and will be physically separated from the Kalamazoo River. The low permeability cover system constructed over the A-Site will reduce the potential for leachate generation and groundwater transport for PCBs from all landfilled material. Long-term groundwater monitoring will detect any contaminants in leachate and groundwater so U.S. EPA can take appropriate action. See U.S. EPA Response PP/C-4.

Comment PP/C-12: *PCB-contaminated materials should be stabilized/solidified prior to landfilling.*

U.S. EPA Response PP/C-12: Long-term groundwater monitoring will be conducted. The specific details of the remedial action for OU2 will be developed during the remedial design phase of the remedy and will be approved by U.S. EPA in consultation with the MDEQ. Any excavation and disposal of PCB-contaminated material will comply with all ARARs. Excavated materials may need to be dewatered, stabilized or solidified to allow for compaction and cap construction but this is not a specific requirement of the ROD. The OU2 remedy does not require that the excavated PCB materials to be stabilized/solidified because the materials are not high enough in water content to warrant such a requirement. The OU2 remedy consists of consolidating PCB contaminated material and placing this material on top of the existing A-Site Landfill residuals, which are above the water table. The waste will be physically separated by the existing sheet pile and the clean fill between the sheet pile and the waste at the A-Site Landfill, and by the setback at the Willow Boulevard Landfill. The low permeability cover

system constructed over the landfills will reduce the potential for leachate generation and groundwater transport of PCBs into the Kalamazoo River.

Comment PP/C-13: *What plans will be developed to address a 500 year flood event or any flood/rain event over the 100 year threshold?*

U.S. EPA Response PP/C-13: The OU2 ROD requires that the landfill cap and its contents be protected against a 100 year flood event. The specific details of the site inspection and maintenance plans will be developed during the remedial design and approved by U.S. EPA in consultation with the MDEQ. A detailed Operation and Maintenance Plan will be submitted to U.S. EPA during the design phase of the remedy. This plan will include provisions for addressing flood and rain events that could have an immediate effect on the function and protectiveness of the remedy and a schedule for making appropriate repairs (e.g., setback requires additional fill, ecologically-friendly dike or stabilized banks require repairs to ensure the protectiveness of the remedy.)

Comment PP/C-14: *EPA's selected remedy should include a concrete barrier around Davis Creek.*

U.S. EPA Response PP/C-14: U.S. EPA disagrees with this comment. U.S. EPA believes that the existing sheet pile at the A-Site Landfill and stabilizing the banks along Davis Creek in areas where sheet pile is not present will protect human health and the environment and will protect against a 100 year flood event. Along Davis Creek, bank stabilization in U.S. EPA's ROD includes limited excavation and re-grading of dike soils to attain a stable slope and placing rip-rap along the bottom of the dike to prevent erosion. U.S. EPA does not believe a concrete barrier is necessary to protect human health and the environment. If U.S. EPA determines that the stabilized banks are not functioning as intended then U.S. EPA may require other methods of bank stabilization, which could include the use of concrete.

Comment PP/C-15: *If the waste from the Georgia Pacific Kalamazoo Mill and Hawthorne Mill sites is disposed at the A-Site residents will have to endure noise and traffic from over 1,750 trucks going past their homes. Assuming 3 trucks per hour over a 40 hour work week would mean a total of 72 days or 14 weeks of truck traffic. Please show on a map what route the trucks will take. Residents south of the site will not want this additional waste in their area. The wastes from the mill sites should be disposed at a permitted treatment storage and disposal facility or treated by stabilization/solidification prior to landfilling at the A-Site.*

U.S. EPA Response PP/C-15: If U.S. EPA reaches an agreement with Georgia Pacific, then the Kalamazoo Mill and Hawthorne Mill cleanup will be conducted as a separate action under U.S. EPA removal authority and will be documented in an U.S. EPA report called an Action Memorandum. The specific details of the removal action and how the action will be conducted, including the proposed truck route, will be developed in the removal reports and approved by U.S. EPA. A Battle Creek resident submitted this comment, and none of the comments U.S.

EPA received from residents near the site expressed any objections to the mill waste being brought to the A-Site Landfill.

Comment PP/C-16: *Any fence along the river corridor should be hidden from view.*

U.S. EPA Response PP/C-16: The purpose of the fence is to prevent trespassers and recreational users from coming into contact with the landfill materials and/or compromising the integrity of the landfill cover and remedy components. The fence must be designed and located consistent with the requirements of Michigan NREPA Part 115 (Solid Waste Management). The exact placement of the fence will be determined during the remedial design and approved by U.S. EPA in consultation with the MDEQ. During the design U.S. EPA will try to have the fence located in an area that is less visible from the river, but U.S. EPA will not be able to do this if it is not protective, is cost-prohibitive, or will not comply with ARARs.

Comment PP/C-17: *What will the ecologically-friendly dike look like? EPA should ensure this is properly designed.*

U.S. EPA Response PP/C-17: Ecologically friendly dikes are made of natural materials and provide a more natural appearance and transition to the surrounding environment. Ecologically friendly dikes are usually more affordable than standard dikes although they may require more maintenance. Ecologically friendly dikes provide increased wildlife habitat and are more aesthetically pleasing. The ecologically friendly dike at OU2 may include:

- Shallow bank slopes that rise gently back from bank-full elevations. The shallow banks would help ensure the stability of the natural materials that cannot withstand the same erosive forces as steeper hard-lined banks;
- Live plantings such as grass, seeded erosion control blankets, immature trees including willow trees and red-osier dogwood;
- Log revetments - covering the bottom of the river bank with large logs, sometimes with limbs left intact to provide in-stream cover or refuge; and/or
- Log lunkers - engineered stream overhangs that protect banks against higher flows, provide in-stream cover, and protect aquatic habitat during normal or low flow.

The specific elements of the ecologically friendly dike at OU2 will be developed during the remedial design phase of the remedy and will be reviewed and approved by EPA in consultation with MDEQ.

Comment PP/C-18: *The short-term risks associated with Alternatives 3 and 4 are overstated. Any short term risks from excavating the landfills can be minimized through proper work practices and controls.*

U.S. EPA Response PP/C-18: U.S. EPA agrees that any short-term risks from excavating the landfills can be minimized through proper work practices and controls and by complying with ARARs. However, U.S. EPA is required to compare cleanup alternatives against nine evaluation

criteria including short-term effectiveness. U.S. EPA's analysis is clear that cleanup alternatives requiring no or significantly less excavation (Alternative 1 and Sub-alternatives 2A, 2B, and 2C) pose less short-term risks than those alternatives requiring more excavation (Alternative 3 and Alternative 4) even though those risks would be minimized as much as possible. U.S. EPA did not select Sub-alternative 2C because Sub-alternative 2C poses less short-term risks than Alternatives 3 and 4 (and 5). U.S. EPA selected Sub-alternative 2C because it protects human health and the environment, complies with ARARs, and provides the best balance of tradeoffs with respect to the other primary balancing criteria (long-term effectiveness; reduction of toxicity, mobility or volume through treatment; implementability, short-term effectiveness and cost).

Comment PP/C-19: *There are significant uncertainties and data gaps concerning groundwater transport of PCBs to the Kalamazoo River. EPA's selected remedy should include groundwater monitoring conducted every three months indefinitely.*

U.S. EPA Response PP/C-19: U.S. EPA agrees that groundwater monitoring should be conducted at OU2, and requirements for groundwater monitoring were included in the OU2 ROD. U.S. EPA does not necessarily agree that monitoring will need to be conducted every three months indefinitely. Most of the waste at OU2 is above the water table. Once the landfill materials are physically separated from the river, and the cover system is installed, the potential for leachate generation and groundwater transport will be significantly reduced. U.S. EPA agrees that groundwater monitoring may initially be warranted every 3 months; however, the exact details of the groundwater monitoring plan will be developed during the remedial design phase of the remedy and approved by U.S. EPA in consultation with MDEQ.

Comment PP/C-20: *How will EPA ensure Georgia Pacific will provide long-term maintenance of the WB/A-Site? Who will take over long-term maintenance if Georgia Pacific declares bankruptcy? EPA should require Georgia Pacific to establish a 30 year or more trust fund.*

U.S. EPA Response PP/C-20: U.S. EPA agrees that it is very important for the PRP to provide U.S. EPA with appropriate financial assurances to construct and maintain cleanup remedies over the long-term. There are several different types of financial assurances U.S. EPA may accept. The specific financial assurance Georgia Pacific will provide will be negotiated between U.S. EPA and Georgia Pacific as part of the OU2 Consent Decree. If Georgia Pacific declares bankruptcy U.S. EPA will submit a claim against Georgia Pacific. U.S. EPA's claim will be for Georgia Pacific's obligations under the OU2 Consent Decree and any other legal agreements U.S. EPA has with Georgia Pacific and/or its successors.

Comment PP/C-21: *The OU2 Consent Decree should require Georgia Pacific to implement deed restrictions at the site. EPA should require the deed restrictions to be in place before work starts.*

U.S. EPA Response PP/C-21: Deed restrictions are placed on a property to regulate future land use and to ensure the protection of public health, safety and welfare, and the environment are

adequately protected. The OU2 Consent Decree will require Georgia Pacific to implement the OU2 remedy, and deed restrictions are part of the remedy. U.S. EPA will require Georgia Pacific to implement the deed restrictions in accordance with the time frames negotiated in the Consent Decree.

Comment PP/C-22: *Any cleanup remedy must guarantee the safety of people in nearby neighborhoods.*

U.S. EPA Response PP/C-22: U.S. EPA's cleanup plan will prevent people from being exposed to the contamination at OU2. Contaminated materials in the areas around the landfills will be excavated and contained with the other landfill materials under a low permeability cover system. U.S. EPA's selected remedy includes fencing and warning signs to keep people off of the landfill. The OU2 cleanup will be conducted using methods intended to minimize the generation of contaminated air-borne dust and the potential for contaminants to wash off-site during construction. The cleanup will comply with all federal and state ARARs including the federal Water Pollution Control Act, Clean Water Act, Rivers and Harbors Act, TSCA and the Clean Air Act; and Parts 91 (Soil Erosion and Sedimentation Control), 301 (Inland Lakes and Streams), 31 (Water Resources Protection), 55 (Air Pollution Control) and 115 (Solid Waste Management) 303 (Wetlands Protection) of the Michigan NREPA; and Michigan Occupational Safety and Health Act 154.

Comment PP/C-23: *Little Portage Creek and the Portage River flow into the St. Joseph River. How will EPA ensure PCB-contaminated materials will not enter the St. Joseph River during the WB/A-Site cleanup?*

U.S. EPA Response PP/C-23: OU2 is located along the Kalamazoo River, which flows into Lake Michigan at Saugatuck. Portage Creek (not Little Portage Creek or Portage River) in Kalamazoo is part of the Allied Paper Inc./Portage Creek/Kalamazoo River Superfund site and flows into the Kalamazoo River. The Kalamazoo River and Portage Creek are not connected to Little Portage Creek, the Portage River or the St. Joseph River. Any cleanup activities conducted in or along the Kalamazoo River or Portage Creek will not affect the St. Joseph River.

2.2 Other Community Comments and Concerns (CC comments)

Comment CC-1: *A resident living next to the WB/A-site is concerned because a lot of the people in the area have serious heart problems and cancer. The woman had a heart transplant, her son needs a heart transplant and her husband is having heart problems. A lot of the kids who grew up in the area have heart problems and she believes a health study is warranted.*

U.S. EPA Response CC-1: U.S. EPA does not conduct health studies. Health studies are conducted by the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR has 7 criteria for determining whether a health study should be conducted. They are:

- Public health significance

- Community perspective and involvement
- Scientific importance
- Ability to prove definitive results
- Availability of resources
- Contribution to program goals
- Authority and support

A copy of ATSDR's "Guidance for ATSDR Health Studies" is available on ATSDR's website at www.atsdr.cdc.gov. Click on "Index" and then click on the letter "H". The guidance is listed under "Health Studies, Guidance for ATSDR." Requests for health studies may be submitted to:

Dr. David Williamson, Director
 Agency for Toxic Substances and Disease Registry
 Division of Health Studies
 1600 Clifton Rd., NE, Mailstop E-31
 Atlanta, Georgia 30333
 (404) 498-0105 or toll free at 1-888-422-8737

Over 75 surface and subsurface soil samples were collected from residential properties next to the site and analyzed for PCBs. Most of the sample results were non-detect or contained low levels of PCBs well below the MDEQ health based residential criteria of 4 mg/kg. Detected concentrations ranged from 0.12 mg/kg to 1.5 mg/kg. One sample contained PCBs at a concentration of 4.4 mg/kg, just above the MDEQ criteria, but this sample was found to be on property owned by Georgia Pacific. The fence between the properties was relocated and provides a barrier between the residence and sample location.

Comment CC-2: *Why is the cleanup taking so long? It was supposed to be done in 2002. What is being done about this? Further studies are useless.*

U.S. EPA Response CC-2: U.S. EPA agrees that the OU2 cleanup has not been progressing as quickly as U.S. EPA would like. The Allied Paper Inc./Portage Creek/Kalamazoo River Superfund site is a very large, complex site with 80 miles of river, four landfills and contaminated former paper mill properties. OU2 was placed on U.S. EPA's National Priorities List in 1990 and the MDEQ was the lead agency, overseeing the PRP's RI/FFS. In 2001 MDEQ rejected the PRP's RI/FFS and took over completing the report. In 2003 the MDEQ completed the human health and ecological risk assessments for the entire Allied Paper Inc./Portage Creek/Kalamazoo River site. The MDEQ finished the OU2 RI/FFS in November 2004. U.S. EPA took over the OU2 lead in 2004 when MDEQ finished the RI/FFS. Progress on OU2 may be slow, but OU2 is only one part of the Allied Paper Inc./Portage Creek/Kalamazoo River site. U.S. EPA is working very hard to make cleanup progress at OU2 and in all areas of the 80 mile Superfund Site.

EPA does not agree that further studies, when appropriate, are useless. These studies allow EPA to appropriately assess the risks at the site in a technically sound manner and to develop well-founded cleanup solutions to address the risk.

Comment CC-3: *Natural Resource Damage monies should be utilized simultaneously with the cleanup. Natural Resource Damage dollars attributable to the WB/A-Site should be made part of the final ROD and settlement so the public and stakeholders will have final resolution for this stretch of river.*

U.S. EPA Response CC-3: U.S. EPA agrees that it would be more timely and cost-effective for the PRP to integrate the Trustee Council's restoration goals into the final remedial design and construction. U.S. EPA will notify the Trustee Council when RD/RA negotiations for OU2 begin and invite the Trustee Council to participate in negotiations. U.S. EPA will also provide the Trustee Council an opportunity to review and comment on RD/RA documents. Based on the scope and complexity of the Allied Paper Inc./Portage Creek/Kalamazoo River site and the different PRPs for different parts of the site, the Trustee Council may wish to pursue a separate settlement agreement that may not be complete by the time U.S. EPA is ready to move forward.

U.S. EPA is not a trustee and cannot make natural resource damage settlement dollars part of the ROD. The natural resource trustees for the Kalamazoo River are:

- MDEQ
- Michigan Department of Natural Resources
- Michigan Attorney General
- U.S. Fish and Wildlife Service
- National Oceanic and Atmospheric Administration

Additional information about the Kalamazoo River Trustee Council is available on the internet at www.fws.gov/midwest/kalamazooNRDA or by contacting:

Judith Gapp
Lead Administrative Trustee
Kalamazoo River Environment Trustee Council
Remediation and Redevelopment Division
Department of Environmental Quality
525 West Allegan St.
P.O. Box 30426
Lansing, MI 48909
(517) 373-7402
leemonn@michigan.gov

Comment CC-4: *EPA should establish deadlines for RD/RA negotiations for the WB/A-Site and for negotiating the Administrative Order on Consent (AOC) for the Georgia Pacific Kalamazoo*

Mill and Hawthorne Mill sites. EPA should threaten the PRP with a Unilateral Administrative Order (UAO) if settlements are not reached.

U.S. EPA Response CC-4: U.S. EPA's time frame for negotiating an RD/RA Consent Decree with the PRP is provided in CERCLA and is 120 days from the date U.S. EPA issues a Special Notice Letter (SNL). A SNL is sent to the PRP after the ROD is signed. CERCLA does not provide U.S. EPA with any statutory time frames for negotiating an AOC for a removal action but it is generally takes 30 to 90 days. If U.S. EPA doesn't reach an agreement with the PRP U.S. EPA will consider its other options for addressing the site including conducting fund-financed cleanups and initiating cost recovery actions or issuing a UAO.

Comment CC-5: *The Fish Consumption Advisory Pamphlets were not readily available at the Proposed Plan Public Meeting. Please have the pamphlets available at future meetings and in clear view so the public can easily obtain a copy.*

U.S. EPA Response CC-5: U.S. EPA sincerely apologizes for this oversight and will make every attempt to have the pamphlets available and readily accessible at future meetings.

Comment CC-6: *Why does MDEQ have to pay for the fish advisory signs along the river? EPA should require Georgia Pacific to post and maintain a network of warning signs along the river. The signs should be inspected every month and replaced as needed. Or EPA should pay for the work and recover the costs from Georgia Pacific. This proves that any future cleanup plans to leave PCB-contaminated sediments in place in the river with institutional controls such as warning signs to not eat the fish will not work because the existing controls do not work.*

U.S. EPA Response CC-6: U.S. EPA will require the PRP to post and maintain the signs along the river once U.S. EPA selects a final remedy for the Kalamazoo River (OU5) but only if warning signs are part of the selected remedy. The funds MDEQ are currently spending on the signs are cost-recoverable and U.S. EPA and/or MDEQ can settle with the PRPs for these costs as part of the OU5 RD/RA Consent Decree or through cost recovery actions.

Comment CC-7: *Did EPA check to make sure the administrative record was up to date in all the information repositories or just the Kalamazoo Library? EPA has a legal requirement to keep these files up to date and EPA should check all repositories at least once a year.*

U.S. EPA Response CC-7: The U.S. EPA project manager and the community involvement coordinator try to make sure the information in the repositories is up to date when they are in the area. U.S. EPA's current policy is to scan the administrative record documents into electronic files and provide them to the information repositories on CD. U.S. EPA's contractor confirmed that they sent out CDs with the OU2 administrative record update to all 6 information repositories. U.S. EPA will follow up with the repositories to verify that the CDs were received and are with the rest of the site information.

Comment CC-8: *EPA must cleanup the Kalamazoo River in an appropriate and timely manner so that people can eat the fish from the river. The economic consequences of PCB contamination in the river are significant. The dams along the Kalamazoo River should be removed to allow recreational users safe passage along the river.*

U.S. EPA Response CC-8: U.S. EPA agrees that the Kalamazoo River should be cleaned up, but it is not clear when people will be able to resume fish consumption. An adequate RI/FS for the River OU5 is needed before U.S. EPA can appropriately assess future cleanup solutions to address the risk. U.S. EPA's cleanup plan for the river will be addressed in the OU5 ROD; this ROD addresses OU2. Cleaning up OU2 and the other landfills and mill properties will contribute to the overall river cleanup by preventing additional PCBs from entering the river.

U.S. EPA recognizes the economic consequences of the PCB contamination in the river and these consequences are being considered by the Trustee Council. See U.S. EPA Response CC-3 for additional information about the Kalamazoo River Trustee Council. U.S. EPA does not have the authority to require dams along the Kalamazoo River to be removed to allow recreational users safe passage.

Comment CC-9: *EPA must open the Kings Highway ROD to provide a natural buffer between the river and the Kings Highway Site.*

U.S. EPA Response CC-9: CERCLA and the NCP do not give U.S. EPA the legal authority to open RODs based on restoration objectives or aesthetics. If the PRPs or the Trustee Council propose to provide a natural buffer between the river and the King Highway Landfill as part of their restoration objectives or settlement, U.S. EPA may need to issue an Explanation of Significant Difference or propose a ROD Amendment to the King Highway Landfill ROD.

Comment CC-10: *EPA needs to make more information about the WB/A-Site and the rest of the Allied Paper Inc./Portage Creek/Kalamazoo site available to the public.*

U.S. EPA Response CC-10: U.S. EPA posts information about OU2 and the rest of the Allied Paper Inc./Portage Creek/Kalamazoo site on the internet at www.epa.gov/region5/sites. U.S. EPA also maintains information repositories containing the administrative record documents for OU2 (see Appendix A of this ROD for a list of these documents) and other site records at libraries in Kalamazoo (2 locations), Plainwell, Otsego, Allegan and in Douglas, Michigan. U.S. EPA also maintains an administrative record for OU2 and the Allied Paper/Portage Creek/Kalamazoo River site at the U.S. EPA Region 5 Superfund Division Records Center in Chicago. The public can access all major reports and documents about OU2 and the other operable units of the site at these repositories.

U.S. EPA holds and has attended many meetings and availability sessions with residents, local officials, and community groups at various locations along the river over the past several years. U.S. EPA maintains a mailing list of residents, officials, community groups and other interested parties. U.S. EPA sends out copies of its proposed plans and other fact sheets and updates to the

parties on U.S. EPA's mailing list. U.S. EPA also takes out advertisements in local newspapers to announce fact sheets, comment periods and meeting dates. Additional information about U.S. EPA's community involvement activities for OU2 is described in Sections 1.1 to 1.3 of this Responsiveness Summary. If there are specific questions or if a member of the public would like to be added to the mailing list, please contact:

Shari Kolak
Remedial Project Manager
U.S. EPA Region 5 (SR-6J)
77 W. Jackson
Chicago, IL 60604
(800) 621-8431 ext. 66151
kolak.shari@epa.gov

Don deBlasio
Community Involvement Coordinator
U.S. EPA Region 5 (PA-19J)
77 W. Jackson
Chicago, IL 60604
(800) 621-8431 ext. 64360
deblasio.don@epa.gov

Comment CC-11: *PCBs do not cause cancer and the negative effects of PCBs on Kalamazoo River wildlife has been exaggerated*

U.S. EPA Response CC-11: U.S. EPA considers PCBs a probable human carcinogen based on several peer-reviewed studies. Additional information concerning the ecological effects of PCBs at the Allied Paper Inc./Portage Creek/Kalamazoo River Site can be found in MDEQ's 2003 *Baseline Ecological Risk Assessment Report* (available in the local information repositories) and the Trustee Council's *Stage 1 Assessment Report for the Kalamazoo River Environment* available at www.fws.gov/midwest/kalamazooNRDA.

2.3 PRP Comments (PRP comments)

Comment PRP-1: *The 0.33 mg/kg PCB human health sediment criterion protective of subsistence and sport fish consumption developed in the Human Health Risk Assessment and the 0.5 mg/kg to 0.6 mg/kg sediment criteria in the RI/FFS developed in the Baseline Ecological Risk Assessment are based on a simple model of PCB partitioning between sediment and the overlying water column and bioaccumulation in fish to calculate no-effect and lowest-effect-based preliminary remediation goals. The model does not apply to soils that may be infrequently submerged. There is no defensible scientific basis for applying these sediment criteria to surface soil (at AMW-3A for example) and in other areas infrequently inundated.*

U.S. EPA Response PRP-1: U.S. EPA agrees that the human health sediment (default) criterion of 0.33 mg/kg PCB should not apply to soils at the AMW-3A area. The OU2 ROD does not require the AMW-3A area be cleaned up to 0.33 mg/kg PCB. The OU2 ROD does, however, require the sediment cleanup criterion of 0.33 mg/kg PCB be applied to wetlands that are inundated for a period of time such that a sediment-to-fish-to-consumer (people and mink) exposure pathway presents an unacceptable risk to consumers of fish. For OU2 wetland areas that are inundated for a period of time such that a sediment-to-consumer exposure pathway does not present an unacceptable risk to consumers of fish, then a cleanup level that is within the acceptable NOAEL/LOAEL range of 6.5 mg/kg to 8.1 mg/kg PCB will apply to these wetlands

to protect terrestrial ecological receptors. See Section 7.2 of the OU2 ROD for a more detailed discussion on the application of the sediment criterion of 0.33 mg/kg PCB to wetland areas.

Comment PRP-2: *EPA should consider rewording the description of historical disposal at the WB site. Page 3 of EPA's Proposed Plan indicates that paper residuals disposed at WB were placed directly into the river. This is not accurate. As seen on the attached 1950 aerial photograph channel islands were well-established in this area of the river long before the residuals were disposed. A substantial portion of the residuals was placed over the islands, not into water.*

U.S. EPA Response PRP-2: U.S. EPA's description of OU2 in the Proposed Plan was intended to be consistent with the RI/FFS which states: "The site was built without berms, and residuals were placed directly into the river and floodplain." The language in the RI/FFS should be acceptable to the PRP since the PRP did not dispute or comment on this language in their January 14, 2004 letter titled: *Kalamazoo River Study Group Dispute and Comment to December 2003 RI/FFS*. Cross Section A-A' in Figure 12A of the RI/FFS shows the interior and western portions of the Willow Boulevard Landfill contain residuals up to 7 feet below the water table. This indicates residuals were placed directly into the river in these areas and/or washed into the river in these areas from other site areas. The OU2 description in the ROD states: "The Willow Boulevard Landfill, which was built without berms, also received dewatered residuals from the King Highway lagoons."

Comment PRP-3: *EPA's selected remedy should retain flexibility to allow limited use of sheet pile to protect the ecologically friendly habitat elements of the remedy. EPA's preferred alternative for WB includes an ecologically-friendly dike along the perimeter of the site. However, the northeast area of WB faces upstream and is subject to considerable erosive forces. Ecologically friendly stabilization features are not expected to sufficiently resist the shear stresses and ice flows of the river during extreme events. An engineered structure such as sheet pile along part of the WB site may be necessary to ensure long-term integrity and permanence of the site and adequately mitigate the potential release of PCBs. A figure proposing about 400 feet of sheet pile along the northeast side of WB is attached.*

U.S. EPA Response PRP-3: U.S. EPA does not agree with this comment. Sub-alternative 2C (U.S. EPA's selected remedy) includes a "setback area" or "buffer zone" between the landfill and the river that will be filled with clean material and will physically separate the waste from the river. The setback area will "buffer" the landfill cover, the waste, and the ecologically friendly dike from the erosional forces of the river. The setback distance is assumed to be 50 feet but the actual distance will be determined during the remedial design. Site areas subject to greater erosive forces may need to have a wider setback than other areas and the setback will have to be regularly inspected and maintained, especially after flood events. Regular inspection and maintenance of the landfill cap and dike will ensure the remedy remains protective over the long-term.

Comment PRP-4: *EPA's Proposed Plan provides limited information about the "ecologically-friendly" and "setback" components of EPA's preferred alternative. The comment describes elements that might be included in the remedial design for the WB site including shallow bank slopes, live plantings, log revetments and log lunkers. The comment discusses potential benefits of ecologically friendly techniques and potential problems including an increased chance of failure under extreme flow, the failure of vegetation to establish, increased maintenance and an increased potential for the introduction of foreign habitat or species.*

U.S. EPA Response PRP-4: The specific elements of the ecologically friendly and setback components of the OU2 remedy will be developed during the remedial design and will be reviewed and approved by U.S. EPA in consultation with MDEQ prior to being implemented. U.S. EPA agrees with the potential benefits of ecologically friendly techniques and believes that any potential problems can be minimized through the proper selection, design, construction, inspection and maintenance of remedy components.

Comment PRP-5: *The width of the setback in Alternative 2C is not defined in the FFS or the Proposed Plan. The west side of WB currently has a 20 foot setback (approximate) that was constructed during the Interim Action. This 20 foot setback adequately protects the north and west banks of the backwater area on the west side of the site and should provide sufficient protection against expected erosional forces. The width of the setback along the north and east sides of WB will be determined during the remedial design by assessing bank stability during a 24-hour 25 year rainfall event. The setback width will be presented in the remedial design.*

U.S. EPA Response PRP-5: The width of the setback for Sub-alternative 2C was not defined in the RI/FFS or Proposed Plan because the actual width needed for the setback to be protective has not been calculated and will not be determined until the remedial design. For cost estimating purposes, the RI/FFS assumed a setback width of 50 feet.

Setback widths will be developed during the remedial design along the entire length of OU2 including areas where setbacks have already been constructed. The setbacks will be designed to meet ROD requirements including protecting the landfill cap and underlying waste material from a 100 year flood event, and will be developed using the procedures, calculations and/or approaches in the U.S. EPA-approved Remedial Design Work Plan or other U.S. EPA-approved planning documents. During the remedial design phase of the remedy, U.S. EPA may determine the existing 20 foot setback in the west part of OU2 is adequate or that it needs to be augmented. The final setback widths must be approved by U.S. EPA in consultation with MDEQ prior to construction.

Comment PRP-6: *The Proposed Plan states "the soil in the area near monitoring well AMW-3A may pose an unacceptable risk to people and wildlife...but this area needs further study." The AMW-3A area has been thoroughly characterized by collecting and analyzing 18 surficial soil and 47 subsurface soil samples in residential and industrially zoned areas. Data from AMW-3A area soil samples is in the RI/FFS.*

U.S. EPA Response PRP-6: U.S. EPA does not agree with this comment. The extent of soil contamination above criteria in the AMW-3A area requiring excavation is not fully known and will be determined during the remedial design and/or through confirmation sampling during the remedial action. PCBs were detected above residential criteria in SB-3A-213 toward the south end of the AMW-3A area. However, no samples were collected south or west of this location to determine if soils beyond SB-3A-213 exceed criteria and require excavation. PCBs were also detected above residential criteria in SB-3A-202 at the north end of the AMW-3A area, but no samples were collected between SB-3A-202 and the A-Site Landfill to determine whether the soils in this area exceed criteria and require excavation.

It is not clear why industrially zoned areas are mentioned in this comment. U.S. EPA's understanding is that the AMW-3A area is owned by Kalamazoo Township and Georgia Pacific but is zoned for residential use, making residential criteria applicable. See Figure 14 in the RI/FFS. Figure 14 shows the AMW-3A area to be residentially zoned. The PRP did not dispute or comment on Figure 14 in their January 14, 2004 letter titled: *Kalamazoo River Study Group Dispute and Comment to December 2003 RI/FFS*. If the zoning for the AMW-3A area has changed, please provide U.S. EPA with the updated documentation so that U.S. EPA can make a determination on the appropriate cleanup criteria to be applied at the AMW-3A area.

Comment PRP-7: *The surface soil data for the residential area near AMW-3A yielded an arithmetic mean of 0.18 mg/kg PCBs with a 95% upper confidence limit (UCL) of 0.48 mg/kg. The surface soil data for the industrially zoned area of AMW-3A yielded an arithmetic mean of 1.86 mg/kg PCBs and a 95% UCL of 2.81 mg/kg. In both cases the arithmetic 95% UCL PCB concentration is less than the Part 201 Generic Direct Contact Cleanup Criteria and Screening Levels of 4 mg/kg and 16 mg/kg in soils in residential and industrially-zoned areas. Based on these data there is no unacceptable risk to human health and the AMW-3A area has been sufficiently investigated. The ROD should delete any references to the need for additional investigation and the suggestion the area around AMW-3A poses an unacceptable risk.*

U.S. EPA Response PRP-7: U.S. EPA does not agree with this comment. Risks at OU2 including potential risks in the AMW-3A area were qualitatively assessed to determine which media and areas should be targeted for remediation and/or environmental controls. This was done by comparing maximum concentrations to relevant criteria including MDEQ's health-based Generic Residential Land Use Criteria, which is also an ARAR for this site. Maximum PCB concentrations in surface and subsurface soil in the AMW-3A area exceed residential criteria and pose an unacceptable risk to human health under future residential scenarios. Maximum PCB concentrations in subsurface soil exceed terrestrial criteria and would pose an unacceptable risk to terrestrial receptors if the soil was dug up and brought to the surface. These risks indicate remedial action is warranted in the AMW-3A area.

Comment PRP-8: *The Proposed Plan should not specify a contingency groundwater remedy and should adopt an approach consistent with the King Highway Landfill Operable Unit (KHL-OU). The Proposed Plan does not mention any groundwater risks but includes provisions for a groundwater remedy if monitoring indicates the presence of contaminants at unacceptable*

levels. Including a contingent groundwater remedy as an element of the Proposed Plan is contrary to agreements (attached to this comment) by the MDEQ to develop the WB/A-Site ROD using the groundwater approach in the KHL-OU ROD. The WB/A-Site ROD should only include provisions for groundwater monitoring. The monitoring program in the Hydrogeologic Monitoring Plan should include a contingency plan that identifies a range of potential response actions if groundwater contaminants exceed risk-based criteria. These actions could include a review of groundwater sampling protocols and/or well installation and development methods, statistical analysis of sampling data, resampling, installing new monitoring wells, risk evaluation, and other actions that may include implementing an engineered groundwater remedy. The detection of groundwater contamination at concentrations exceeding target criteria should not immediately trigger a groundwater remedy.

U.S. EPA Response PRP-8: U.S. EPA's Proposed Plan does not specify a contingent groundwater remedy. The description for Alternative 2 on page 5 of U.S. EPA's Proposed Plan states:

"Groundwater monitoring will be conducted and the results will be evaluated. If contaminants are present at concentrations that present a risk to public health or wildlife, then a groundwater cleanup remedy may be required but that remedy will be done under a separate action."

The description of U.S. EPA's preferred cleanup alternative on page 7 of the Proposed Plan also states that long-term groundwater monitoring will be conducted. The description of Sub-alternative 2C in the ROD is consistent with the descriptions in the Proposed Plan, stating that "Long-term maintenance and groundwater monitoring would be conducted" (Sections 9.1.4 and 9.1.2) and that "Long-term groundwater monitoring would verify whether PCBs are mobilizing to groundwater so that an appropriate action could be taken" (Section 10.4).

The Hydrogeologic Groundwater Monitoring Plan will be developed during the remedial design and approved by U.S. EPA in consultation with the MDEQ. U.S. EPA agrees that the components of the long-term groundwater monitoring plan should include the elements described above.

Appendix B

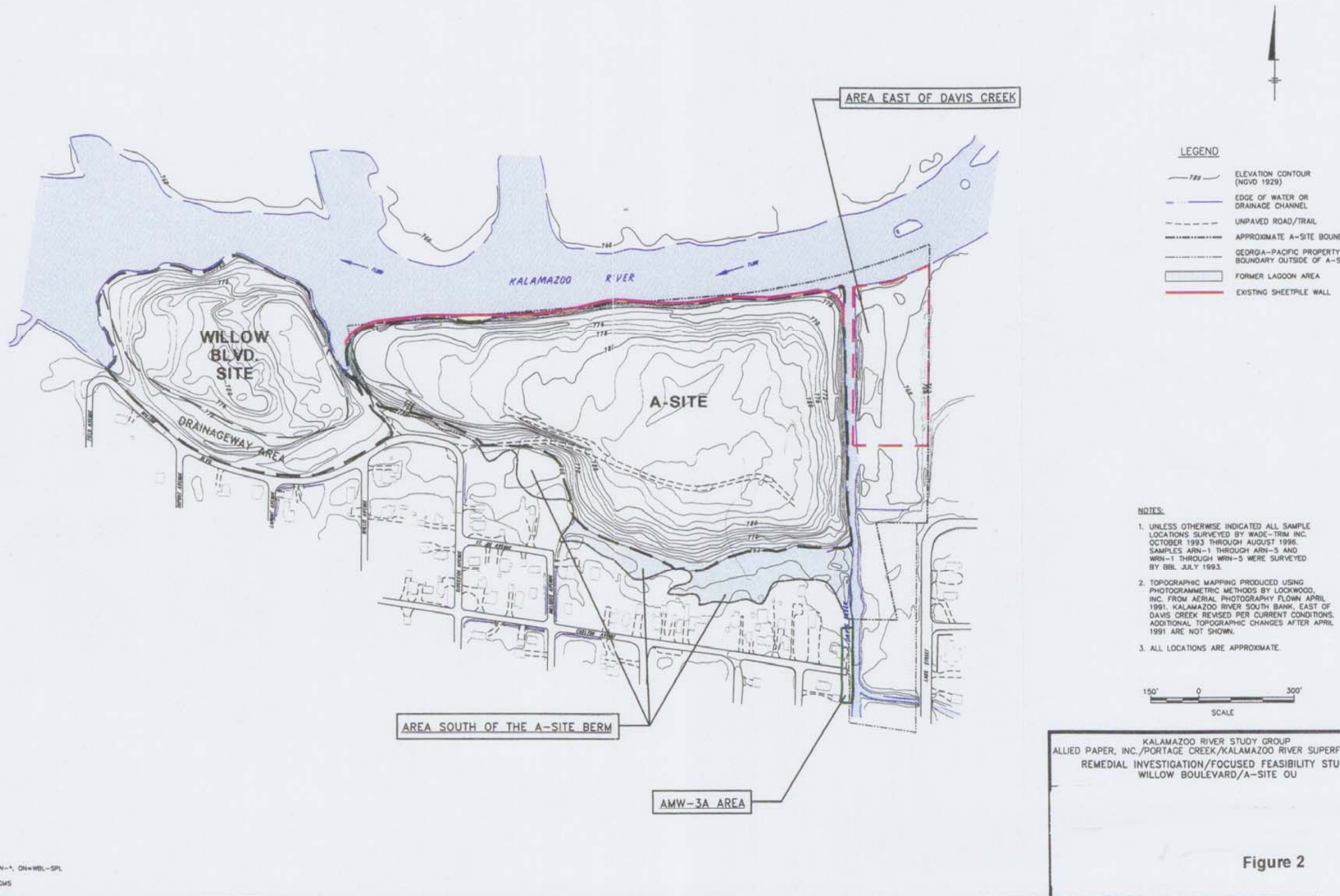


Figure 2

Appendix C

APPENDIX C

STATEMENT OF WORK FOR THE REMEDIAL DESIGN AND REMEDIAL ACTION AT THE WILLOW BOULEVARD/A-SITE LANDFILL, OPERABLE UNIT 2 OF THE ALLIED PAPER, INC./PORTAGE CREEK/KALAMAZOO RIVER SUPERFUND SITE KALAMAZOO TOWNSHIP, MICHIGAN

I. PURPOSE

The purpose of this Statement of Work (SOW) is to set forth requirements for implementation of the Remedial Action set forth in the Record of Decision (ROD) for the Willow Boulevard/A-Site Landfill, Operable Unit 2 (OU2), of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (Site) which was signed by the Director of the United States Environmental Protection Agency (U.S. EPA) Region 5 Superfund Division on September 27, 2006. Settling Defendant shall follow the ROD; the Consent Decree; this SOW¹; the approved Remedial Design Work Plan, the approved Remedial Action Work Plan; U.S. EPA Superfund Remedial Design and Remedial Action Guidance; and any additional guidance provided by U.S. EPA in submitting deliverables for designing and implementing the remedial actions for OU2.

II. DESCRIPTION OF THE REMEDIAL ACTION/PERFORMANCE STANDARDS

Settling Defendant shall design and implement the Remedial Action (RA) to meet the performance standards and specifications set forth in the ROD and this SOW. Performance standards shall include cleanup standards, standards of control, quality criteria and other substantive requirements, criteria or limitations including all Applicable or Relevant and Appropriate Requirements (ARARs) set forth in the ROD, SOW and/or Consent Decree. Settling Defendant will evaluate the presence of the sheet pile wall at A-Site and its impact on the execution of the remedial action.

The areas that comprise OU2 that shall be addressed by this SOW are listed below:

- The Willow Boulevard Landfill and the A-Site Landfill, which primarily contain PCB-contaminated paper residuals (residuals), and from which PCB-contaminated material has migrated into the surrounding areas;
- The Willow Boulevard Drainageway;

¹ Terms defined in the Consent Decree, generally, are not redefined herein.

- The Area South of the A-Site Berm, including former Olmstead Creek;
- The Area East of Davis Creek; and
- The area near monitoring well AMW-3A

1. Excavation

Settling Defendant shall determine the horizontal and vertical extent of the PCB contamination based on field reconnaissance and/or sample analyses prior to any excavation or dredging in the previously mentioned areas. The determination of the horizontal and vertical extent of the PCB contamination shall be subject to U.S. EPA review and approval. If U.S. EPA gives written approval, Settling Defendant may rely on existing site data in determining the extent of contamination. Settling Defendant shall excavate the Willow Boulevard drainageway; the area south of the A-Site berm, including former Olmstead Creek; the area east of Davis Creek; and the area near monitoring well AMW-3A until confirmation sampling demonstrates compliance with the applicable cleanup criteria specified in Table 5, Section 7.2 of the ROD. When determining whether the applicable cleanup criteria have been achieved, U.S. EPA may consider, but need not be limited to, the area-averaged PCB concentration.

Settling Defendant shall excavate the Willow Boulevard Drainageway, the Area South of the A-Site Berm, the Area East of Davis Creek, and the former Olmstead Creek Area to the remedial action goal of 0.33 ppm PCB. The areas to be so excavated are delineated on Figure 2 of the ROD. The Settling Defendant shall excavate these four areas to the 0.33 ppm PCB cleanup goal; however, by doing so, Settling Defendant does not concede that such a conservative excavation approach is necessary to protect human health or the environment in these four areas of OU2, or other areas of the Allied Paper/Portage Creek/Kalamazoo River Superfund Site.

U.S. EPA recognizes that it may be difficult to determine with certainty the remedial actions that may be necessary to achieve the 0.33 ppm remediation goal until additional sampling is conducted pursuant to this SOW to determine the extent of PCB contamination in these areas. Settling Defendant and U.S. EPA agree that Settling Defendant shall excavate these areas in accordance with the Remedial Action Work Plan (RA Work Plan), which will be developed by Settling Defendant and approved by U.S. EPA. The RA Work Plan or, as appropriate, the Field Sampling Plan, will include a sampling protocol to determine post-excavation PCB concentrations.

If, subsequent to the excavation and confirmation sampling required by the initially-approved RA Workplan and/or Field Sampling Plan, U.S. EPA determines that the 0.33 ppm PCB remediation goal has not been achieved, U.S. EPA will consult with Michigan Department of Environmental Quality (MDEQ) and Settling Defendant regarding (1) whether additional remedial actions will be effective in achieving the 0.33 ppm remediation goal in the area; and (2) the potential nature of such additional remedial actions. Additional remedial actions to be

considered include, but are not limited to: (1) additional excavation; (2) backfilling with clean material; (3) capping; and (4) monitored natural attenuation. In determining whether and how to proceed with additional remedial activities, U.S. EPA will consider the extent and concentration of the remaining PCBs in the area(s).

1.1. Setback from the Kalamazoo River at the Willow Boulevard Landfill

The excavation along the northern banks of the Willow Boulevard Landfill (along the Kalamazoo River) shall be of sufficient distance to create an adequate buffer zone, which will ensure that, for the lifetime of the remedy, there is no direct contact between the contaminated residuals within the landfill and the Kalamazoo River. This buffer will also be adequate to prevent PCBs from migrating (by surface water runoff or erosion) from the landfill into the Kalamazoo River. The excavated areas shall be backfilled with clean soil with sufficient organic content to support restoration planting materials and to create an ecologically friendly bank. Additionally, this buffer zone or setback shall be of sufficient size to allow for the installation of and access to groundwater monitoring wells. The extent of the excavation shall be identified primarily by visual criteria and the excavated material shall be relocated further into the landfill.

2. Cap

Settling Defendant shall install a cap over both the Willow Boulevard and A-Site Landfills in compliance with the relevant requirements of Part 115, Solid Waste Management, of the Michigan Natural Resources and Environmental Protection Act (NREPA), (Part 115) concerning cap specifications for closure of a solid waste disposal facility. Unless Settling Defendant requests a variance pursuant to Part 115, Settling Defendant shall design a cap as a part of the Remedial Design (RD) consistent with Part 115,.

Settling Defendant shall also design the cap to meet the remedial action objectives set forth in the ROD as follows:

- The cap shall physically isolate and contain the contaminated material and reduce the potential for PCBs to migrate (by surface water runoff or erosion) from the landfill into the Kalamazoo River.
- The construction of the cap over the landfills shall minimize infiltration of precipitation through the landfills and migration of PCBs from the landfills into the groundwater.
- The cap shall also prevent human or ecological exposures to residuals within the landfills.

3. Erosion Protection and Containment System

Settling Defendant shall protect the landfill against erosion in compliance with NREPA. This protection shall include implementation of bank stabilization and erosion control measures to protect the cap and contents of the landfill from a 100-year flood and reduce the migration of PCBs into the Kalamazoo River and adjacent areas. In places at the A-Site Landfill where there is no sheet pile, the existing dike soils shall be regraded to achieve a bank with a gentler, stable slope, and a zone of rip-rap shall be placed at the toe of the bank to prevent erosion. In places at the Willow Boulevard Landfill where no adequate dikes exist, an earthen berm and/or swale or ditch shall be constructed to direct storm water runoff from the landfill away from adjacent residences. Areas of the berm that are subject to erosion shall be protected using techniques including, but not limited to, articulated concrete systems, geoweb materials, or revetment blankets. Placement of erosion and flood protection on the side walls of the landfill shall be consistent with the relevant requirements of state and federal laws, including Part 115, Solid Waste Management; Part 301, Inland Lakes and Streams; Part 91, Soil Erosion and Sedimentation Control; and Part 303, Wetland Protection, of the NREPA, as well as the federal Clean Water Act and the Rivers & Harbors Act.

4. Mitigation

Settling Defendant shall mitigate for environmental impacts associated with the implementation of the remedial actions set forth in the ROD, the CD, and this SOW pursuant to 40 CFR 300.430(e)(9)(iii)(E)(3) and for impacts to the wetland habitat in areas associated with remedial actions in the Area East of Davis Creek, in the Willow Drainageway, and in the Area South of the A-Site Berm. Prior to initiating any mitigation actions, Settling Defendant shall submit, as part of the RA Work Plan, a Mitigation Work Plan for review and approval of U.S. EPA. U.S. EPA will provide notice of submission of the Mitigation Work Plan and an opportunity to consult to the Natural Resource Trustees. Upon completion of excavation under Section II.1, Settling Defendant shall re-establish vegetation and surface elevations unless otherwise directed by U.S. EPA. Soil erosion shall be controlled compliant with state law during remedy implementation. Wetland mitigation shall also be performed pursuant to the NREPA, Part 303, Wetlands Protection, in areas associated with remedial actions in the Area East of Davis Creek, in the Willow Drainageway, and in the Area South of the A-Site Berm.

Settling Defendant shall mitigate environmental impacts to the bank of the River associated with implementation of the Remedial Action by regrading and stabilizing the bank, and restoring the bank with native vegetation and other erosion control measures (up to the 100-year storm event elevation).

5. Short-Term and Long-Term Monitoring

5.1 Short-term Monitoring

5.1.1 Surface Water

Settling Defendant shall include in the RD a short-term surface water monitoring program that must be used during all construction and excavation activities that may have an impact on surface water. Surface water monitoring shall be conducted in order to insure that public health, safety, welfare, and the environment are being protected in accordance with state and federal law during implementation of excavation activities, including Part 31, Water Resources Protection, of the NREPA and the Clean Water Act's Ambient Water Quality Criteria.

5.1.2 Air

During construction activities, Settling Defendant shall perform air monitoring. Air monitoring will ensure that the RA activities do not violate rules prohibiting the emission of air contaminants in quantities which have injurious effects on human health, animal life, plant life of significant economic value, and/or property as established in Part 55, Air Pollution Control, of the NREPA and the federal Clean Air Act.

5.2 Long-term Monitoring

Settling Defendant shall perform long-term groundwater monitoring following construction of the remedy. Appropriate long-term groundwater monitoring may require the installation of additional monitoring wells or abandonment of existing wells that are no longer necessary. The number and location of groundwater monitoring wells shall be specified by Settling Defendant in the RD and is subject to U.S. EPA approval, in consultation with the State of Michigan through MDEQ. Monitoring of the groundwater aquifer shall be conducted in accordance with Part 201, Environmental Remediation, of the NREPA.

Settling Defendant shall continue to perform groundwater monitoring until the U.S. EPA, in consultation with MEDQ, determines that such monitoring is no longer necessary. The continued need for groundwater monitoring will be evaluated at the five-year review required under the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (NCP), and at each review thereafter.

6. Fencing and Permanent Marker(s)

Settling Defendant shall install fencing around the Willow Boulevard and A-Site landfill portions of OU2 as necessary to restrict unauthorized access to the landfills. The fence alignment will take into account the 100-year flood elevations. Settling Defendant shall also place permanent marker(s) around the boundary of the landfill describing the restricted area of OU2 and the nature of any restrictions. Warning signs shall also be posted on the fence every 200 feet and on all entry gates. The number, content, and location of the permanent markers and warning signs shall be approved by the U.S. EPA.

7. Deed Restrictions

Settling Defendant shall execute and record with the Kalamazoo County Clerk/Register Office deed restrictions and restrictive covenants on OU2 property in accordance with Section VII of the Consent Decree.

8. Long-term Maintenance

Settling Defendant shall perform the long-term maintenance and post-closure care as required by Part 201, Environmental Remediation, of the NREPA, which shall be provided as part of the RA. A detailed Operation and Maintenance Plan (O&M Plan) shall be submitted as part of the RD. The O&M Plan, subject to U.S. EPA approval, shall also include provisions for monitoring and maintenance of the mitigation actions pursuant to Section II.4. Upon U.S. EPA approval of the O&M Plan, long-term O&M shall be carried out pursuant to the O&M Plan. Prior to approval of the O&M Plan, U.S. EPA will provide notice and an opportunity to consult to the Trustees.

9. Other Provisions

Measures shall be taken during remedy construction activities to minimize the noise and dust impacts of construction upon the surrounding community. Fugitive dust emissions shall be monitored and controlled in a manner to ensure compliance with the standards contained in Part 55, Air Pollution Control, of the NREPA and the federal Clean Air Act.

III. SCOPE OF REMEDIAL DESIGN, REMEDIAL ACTION

The Remedial Design/Remedial Action (RD/RA) shall consist of six tasks. All RD/RA plans are subject to U.S. EPA approval.

Task 1: Remedial Design Work Plan

Settling Defendant shall submit a Remedial Design Work Plan (RD Work Plan) in accordance with Section V, Paragraph 11, of the Consent Decree and Section V of this SOW. The RD Work

Plan shall document the overall management strategy for performing the design, construction, operation, maintenance and monitoring of the respective RA for U.S. EPA review (with reasonable notice and opportunity for comment by the State and the Natural Resource Trustees) and approval. The plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation and shall include a description of qualifications of key personnel directing the RD, including contractor personnel. The Work Plan shall also contain a schedule of RD activities.

The RD Work Plan shall include plans and schedules as required by Section V, Paragraph 11, of the Consent Decree. The RD Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the RD. The RD Work Plan shall include, consistent with the Consent Decree, a pre-design Quality Assurance Project Plan (QAPP), a Health and Safety Plan, and a Field Sampling Plan. The existing U.S. EPA-approved Multi-Area QAPP, Multi-Area Health and Safety Plan, and Multi-Area Field Sampling Plan may be used in lieu of new documents, unless otherwise directed by U.S. EPA. Supplements to or updates of those documents may be prepared to address information requirements specific to OU-2. Any such updates or supplements shall be identified and provided according to a schedule established in the RD Work Plan. The Field Sampling Plan shall include sections detailing any geo-technical sampling and investigations necessary to support development of the Mitigation components of the RD Work Plan. Settling Defendant shall implement the pre-design work in accordance with the final RD Work Plan. The results of any pre-design studies shall be included with the Preliminary Design.

Task 2: Remedial Design Phases

Settling Defendant shall prepare construction plans and specifications to implement the RA at OU2 as described in the ROD and this SOW. Plans and specifications shall be submitted in accordance with the schedule set forth in Section V below. Subject to approval by U.S. EPA, Settling Defendant may submit more than one set of design submittals reflecting different components of the RA. All plans and specifications shall be developed in accordance with U.S. EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive No. 9355.0-4A) and shall demonstrate that the RA will meet all objectives of the ROD, the Consent Decree and this SOW, including all Performance Standards. EPA's Project Coordinator and Settling Defendant's Project Coordinator will meet in person or via conference call, at a minimum, on a monthly basis, unless EPA's Project Coordinator agrees to meet on a greater or less frequent basis. EPA will provide notice of and an opportunity to attend meetings or calls that include a discussion of Mitigation activities to the Natural Resource Trustees.

A. Preliminary Design

Settling Defendant shall concurrently submit the Preliminary Remedial Design when the design effort is approximately 50% complete. If required by the approved RD Work Plan

the respective Preliminary Design submittal shall include or discuss, at a minimum, the following:

- design criteria, including a U.S. EPA-approved scientifically valid indicator of wetland characterization for use in determining sediment cleanup levels;
- results of treatability studies, if required;
- results of additional field sampling and pre-design work;
- project delivery strategy;
- preliminary plans, drawings and sketches, including the 50 % Draft Engineering Design Report;
- required specifications in outline form;
- preliminary construction schedule;
- proposed cleanup verification methods, including compliance with Applicable or Relevant and Appropriate Requirements (ARARs);
- proposed siting/locations or processes/construction activities, including the 50 % Draft Performance Standards Verification Plan (PSVP);
- real estate, easement, restrictive covenant, and permit requirements;
- Draft QAPP/Draft Health and Safety Plan/Draft Field Sampling Plan/Draft Contingency Plan;
- plans and designs for implementation of the mitigation actions;
- a description of implementation methods and techniques;
- a description of the equipment to be employed, including capacity, size, and materials or construction;
- seeding and planting plans, including species lists, proposed source of materials, planting density and configurations, timing, and performance measures through the initial establishment of vegetation (3 years);
- cut and fill volume determinations and suitability analysis of fill material;
- erosion and sediment control plans--proposed engineering controls;
- analysis statement (or defense) regarding the long-term maintainability of the mitigation site(s). This statement will be supported by the appropriate models.
-

B. Pre-Final Design

Settling Defendant shall submit the Pre-Final Remedial Design when the design effort is 95% complete. The Pre-Final Design shall fully address all U.S. EPA comments made to the preceding design submittal.

C. Final Design

Settling Defendant shall submit the Final Remedial Design when the design effort is 100% complete. The Final Design shall respectively fully address all of U.S. EPA Remedial comments made to the Pre-Final Design and shall include reproducible

drawings and specifications suitable for bid advertisement. The Pre-Final Remedial Design shall serve as the respective Final Design if U.S. EPA has no further comments and issues the respective notice to proceed on the basis of the respective Pre-Final Design.

Unless otherwise directed by U.S. EPA in the approved RD Work Plan, the respective Pre-Final and Final Design submittals shall include, at a minimum, those elements listed for the Preliminary Design, as well as the following:

- final plans and specifications;
- Draft OU2 O&M Plan;
- Construction Quality Assurance Project Plan (CQAPP). The CQAPP, which shall detail the approach to quality assurance during construction activities at OU2, shall also specify a quality assurance official (QA Official) to conduct a quality assurance program during the construction phase of the project;
- Contingency Plan; and
- PSVP. The PSVP shall explain in detail, which mechanisms will ensure that the RA achieves the overall Remedial Action Objectives (RAOs) developed and defined in the ROD, including those RAOs that are not based upon concentration levels of hazardous substances. The PSVP shall also include provisions for confirmation sampling, as needed.

Task 3: Remedial Action Work Plan

Settling Defendant shall submit a Remedial Action Work Plan (RA Work Plan) that includes detailed descriptions of the remediation and construction activities. The RA Work Plan shall be based on the respective approved Final Design, and shall include air and surface water monitoring provisions as determined necessary by U.S. EPA for the RA Work Plan.

a. The RA Work Plan shall list the major deliverables and include a project schedule for each major activity and submission of deliverables generated during the RA. Settling Defendant shall submit a RA Work Plan in accordance with Section V, paragraph 12 of the Consent Decree and Section V of this SOW. The Remedial Action Work Plan shall include, but not be limited to, the following: (1) a schedule for completion of the Remedial Action; (2) a method for selection of the contractor; (3) a schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) a tentative formulation of the Remedial Action team; (9) a construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial

formulation of Settling Defendant's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

Task 4: Remedial Action

Settling Defendant shall implement the RA as detailed in the approved Final Design and Work Plan. The following activities shall be completed in constructing the RA.

A. Preconstruction inspection and meeting:

Unless not required by U.S. EPA, Settling Defendant shall participate with the U.S. EPA in a preconstruction inspection and meeting to:

- a. Review methods for documenting and reporting inspection data;
- b. Review methods for distributing and storing documents and reports;
- c. Review work area security and safety protocol;
- d. Discuss any appropriate modifications of the construction quality assurance plan to ensure that site-specific considerations are addressed; and
- e. Conduct walk-around of OU2 to verify that the design criteria, plans, and specifications are understood and to review material and equipment storage locations.

The preconstruction inspection and meeting shall be documented by a designated person and minutes shall be transmitted to all parties. Prior to the final scheduling of preconstruction inspections and meetings, EPA shall give notice and an opportunity to attend to MDEQ and the Natural Resource Trustees.

B. Completion of the RA:

In accordance with Paragraph 52 of the Consent Decree, within 90 days after Settling Defendant concludes that all phases of the Remedial Action (excluding OU2 O&M), have been fully performed and the OU2 Performance Standards (as defined in the approved RA and Performance Standard Verification Plan) have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection of the OU2 Remedial Action to be attended by Settling Defendant, U.S. EPA. Prior to the pre-certification inspection, U.S. EPA will provide notice and an opportunity to attend to MDEQ and the

Trustees. If, after the pre-certification inspection, Settling Defendant still believes that the OU2 Remedial Action has been fully performed and the applicable OU2 Performance Standards have been attained, Settling Defendant shall submit a written report within 30 days of the inspection requesting certification to U.S. EPA for approval, with a copy to MDEQ and the Natural Resource Trustees, pursuant to Section XIII of the Consent Decree. In the report a professional engineer and Settling Defendant's Project Coordinator shall state the construction of the OU2 RA has been completed in full satisfaction of the requirements of the Consent Decree. The written report shall include a certification statement and signatures identified in Paragraph 52.a of the Consent Decree and described in Task 4.D.2, below. Subsequent requests for certifications, inspections, and reports shall also be in accordance with the terms of Paragraph 52 of the Consent Decree.

C. Completion of OU2 Work

In accordance with Paragraph 53 of the Consent Decree, within 90 days after Settling Defendant concludes that all phases of the OU2 Work, as defined in the Consent Decree, (including O&M), have been fully performed, Settling Defendant shall schedule and conduct pre-certification inspection of OU2 Work pursuant to Section XIII, Paragraph 53.a, of the Consent Decree, to be attended by Settling Defendant and U.S. EPA. Prior to the pre-certification inspection, U.S. EPA will provide notice and an opportunity to attend to MDEQ and the Natural Resource Trustees. If, after the pre-certification inspection, Settling Defendant still believes that the OU2 Work has been fully performed, Settling Defendant shall submit a written report (Completion of Work Report) by a registered professional engineer stating that the OU2 Work has been completed in full satisfaction of the requirements of the Consent Decree and this SOW. The written report shall contain the certification statement and signatures identified in Paragraph 53.a of the Consent Decree and described in Task 4.D.3. If, after review of the written report, U.S. EPA determines any portion of the OU2 Work has not been completed in accordance with the Consent Decree or this SOW, U.S. EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to the Consent Decree to complete the OU2 Work. U.S. EPA will include in its notification a schedule for Settling Defendant's performance of the activities, consistent with the Consent Decree and this SOW, or require Settling Defendant to submit a schedule to U.S. EPA for approval pursuant to Section X of the Consent Decree.

If, based on the initial or any subsequent request for Certification of Completion of OU2 Work by Settling Defendant, the U.S. EPA concludes, after a reasonable notice and opportunity for review and comment by MDEQ and the Natural Resource Trustees, that the OU2 Work has been performed in accordance with the Consent Decree and this SOW, U.S. EPA will notify Settling Defendant in writing.

D. Reports

1. Progress Reports

Unless otherwise required by U.S. EPA, Settling Defendant shall submit to U.S. EPA, MDEQ, and the Natural Resource Trustees, in accordance with Paragraph IX of the Consent Decree, monthly progress reports during construction, and quarterly reports during other activities, delineating the status of OU2 activities.

2. Certification of Completion of the RA Report

The Certification of Completion of the RA Report, as provided for in Paragraph 52 of the Consent Decree, shall include the following items, as determined by U.S. EPA to be necessary:

- Brief description of how outstanding items noted in the Pre-final Inspection were resolved;
- Explanation of modifications made during the RA to the approved RD and RA Work Plans and why these changes were made;
- As-built drawings; and
- Synopsis of the work defined in the SOW and a demonstration in accordance with the Performance Standards Verification Plan that Performance Standards have been achieved;
- Certification that the RA has been completed in full satisfaction of the requirements of the Consent Decree and this SOW; and
- if O&M has commenced, description of how Settling Defendant will implement any remaining part of the U.S. EPA approved O&M Plan.
- a summary of the respective mitigation objectives and the actions implemented to meet those objectives;
- a certification that all work plans, specifications, and schedules have been implemented and completed in accordance with the respective plans approved by EPA;
- as-built plan drawings, including vegetation established and erosion controls remaining in place;
- a discussion of difficulties encountered during project implementation that may alter or reduce the effectiveness of the respective mitigation and any implemented or planned corrective actions; and
- a discussion of any necessary modifications to the operation and maintenance procedures as approved.

The written report shall identify any performance standards that have not been met as of the date of the report, and shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. Completion of OU2 Work Report

In the Certification of Completion of OU2 Work Report, as provided for in Paragraph 53 of the Consent Decree, a registered professional engineer and Defendant's Project Coordinator shall state that the OU2 Work, as defined in the Consent Decree, has been completed in full satisfaction of the requirements of the Consent Decree. The written report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or Settling Defendant's Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Task 5: Operation and Maintenance

Settling Defendant shall prepare an O&M Plan to cover both implementation and long-term maintenance of the Remedial Action. The O&M Plan shall include a Section covering Mitigation action monitoring. The purpose of post-construction mitigation monitoring is to determine the status and effectiveness of the implemented mitigation. Initial Draft O&M Plans shall be submitted as final Design Document submissions. The Final O&M Plan shall be submitted to U.S. EPA, with copies to MDEQ and the Natural Resource Trustees, in accordance with the construction schedule contained in the approved RA Work Plan. The O&M Plan shall comprise the following elements as may be applicable to OU2:

1. Description of normal maintenance:
 - a. Description of tasks for operation;
 - b. Description of tasks for maintenance;
 - c. Description of prescribed treatment or operation conditions; and
 - d. Schedule showing frequency of each O&M task.
2. Description of potential operating problems:
 - a. Description and analysis of potential operation problems;
 - b. Sources of information regarding problems; and
 - c. Common and/or anticipated remedies.
3. Description of routine monitoring and laboratory testing:
 - a. Description of monitoring program design and monitoring tasks;
 - b. Description of required data collection, metrics, techniques and methods, laboratory tests and their interpretation;
 - c. Required quality assurance, and quality control;
 - d. Schedule of monitoring frequency and procedures for a petition to U.S. EPA to reduce the frequency of maintenance or to discontinue it; and
 - e. Description of verification sampling procedures if cleanup or performance standards are exceeded in routine monitoring.

4. Description of alternate O&M:
 - a. Should systems fail, alternate procedures to prevent release or threatened releases of hazardous substances, pollutants or contaminants which may endanger public health and the environment or exceed performance standards; and
 - b. Analysis of vulnerability and additional resource requirement should a failure occur.
5. Corrective Action:
 - a. Description of corrective action to be implemented in the event that cleanup or performance standards are not attained; and
 - b. Schedule for implementing these corrective actions.
6. Safety plan:
 - a. Description of precautions, of necessary equipment, etc., for OU2 personnel; and
 - b. Safety tasks required in event of systems failure.
7. Description of equipment:
 - a. Equipment identification;
 - b. Installation of monitoring components;
 - c. Maintenance of OU2 equipment; and
 - d. Replacement schedule for equipment and installed components.
8. Records and reporting mechanisms required:
 - a. Daily operating logs;
 - b. Laboratory records;
 - c. Records for operating costs;
 - d. Mechanism for reporting emergencies;
 - e. Personnel and maintenance records; and
 - f. Monthly/annual reports to State agencies.

Task 6: Performance Monitoring

Performance monitoring shall be conducted by Settling Defendant to ensure that all Performance Standards are met.

- A. Performance Standard Verification Plan: The purpose of the PSVP is to provide a mechanism to ensure that both short-term and long-term Performance Standards for the RA are met. Settling Defendant shall submit the Draft PSVP with the Pre-Final Design. Upon approval by U.S. EPA, Settling Defendant shall implement the PSVP according to the approved schedule. The PSVP shall include:
1. QAPP
 2. Health and Safety Plan
 3. Field Sampling Plan
 4. Specification of those tasks to be performed by Settling Defendant to demonstrate compliance with the Performance Standards and a schedule for the performance of these tasks.

IV. CONTENT OF SUPPORTING PLANS

The documents listed in this section, including the QAPP; the Field Sampling Plan; the Health and Safety Plan; the Contingency Plan; the CQAPP are documents, which must be prepared by Settling Defendant and submitted as outlined in Section III of this SOW. The following section describes the required contents of each of these supporting plans.

1. Quality Assurance Project Plan

Settling Defendant shall develop an OU2-specific QAPP, covering sample analysis and data handling for samples collected in all phases of the required Work, based upon the Consent Decree and guidance provided by U.S. EPA. The QAPP shall be consistent with the requirements of the U.S. EPA Contract Lab Program (CLP) for laboratories proposed outside the CLP. The QAPP shall at a minimum include:

- Project Description, including:
 - Operable Unit 2 History;
 - Past Data Collection Activity;
 - Project Scope;
 - Sample Network Design;
 - Parameters to be Tested and Frequency; and
 - Project Schedule
- Project Organization and Responsibility
- Quality Assurance Objective for Measurement Data, including:
 - Level of Quality Control Effort;

- Accuracy, Precision and Sensitivity of Analysis; and
- Completeness, Representativeness and Comparability
- Sampling Procedures
- Sample Custody, including:
 - Field Specific Custody Procedures and
 - Laboratory Chain of Custody Procedures
- Calibration Procedures and Frequency, including:
 - Field Instruments/Equipment and
 - Laboratory Instruments
- Analytical Procedures, including:
 - Non-Contract Laboratory Program Analytical Methods;
 - Field Screening and Analytical Protocol; and
 - Laboratory Procedures.
- Internal Quality Control Checks, including:
 - Field Measurements and
 - Laboratory Analysis
- Data Reduction, Validation, and Reporting, including:
 - Data Reduction;
 - Data Validation; and
 - Data Reporting
- Performance and System Audits, including:
 - Internal Audits of Field Activity;
 - Internal Laboratory Audit;
 - External Field Audit; and
 - External Laboratory Audit
- Preventive Maintenance, including:
 - Routine Preventative Maintenance Procedures and Schedules;
 - Field Instruments/Equipment; and
 - Laboratory Instruments
- Specific Routine Procedures to Assess Data Precision, Accuracy, and Completeness, including:
 - Field Measurement Data and
 - Laboratory Data

- Corrective Action, including:
 - Sample Collection/Field Measurement and
 - Laboratory Analysis
- Quality Assurance Reports to Management

Settling Defendant shall submit the draft QAPP to U.S. EPA for review and approval. The QAPP shall be designed to address all phases of the project from pre-design to confirmatory sampling. If, because of the logistics of the project, the initial QAPP, developed as part of the RD Work Plan, does not lend itself to addressing all phases of the project, the QAPP shall be modified to incorporate any appropriate changes.

2. Health and Safety Plan

Settling Defendant shall develop a Health and Safety Plan, which is designed to protect on-site personnel and area residents from physical, chemical and all other hazards posed by this RA. The Health and Safety Plan shall develop the performance levels and criteria necessary to address the following areas:

- Description of OU2
- Personnel
- Levels of protection
- Safe work practices and safe guards
- Medical surveillance
- Personal and environmental air monitoring
- Personal protective equipment
- Personal hygiene
- Decontamination - personal and equipment
- OU 2 work zones
- Contaminant control
- Contingency and emergency planning
- Logs, reports and record keeping

The Health and Safety Plan shall follow U.S. EPA guidance and all OSHA requirements as outlined in 29 CFR Parts 1910 and 1926. As part of the Health and Safety Plan, Settling Defendant shall include a Contingency Plan describing procedures to be used in the event of an accident or emergency at OU2. The Contingency Plan shall include, at a minimum, the following:

1. Name of the person or entity responsible for responding in the event of an emergency incident;

2. Plan and date(s) for meeting(s) with the local community, including local, State, and Federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
3. First aid medical information;
4. Air Monitoring Plan (if applicable); and
5. Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), as specified in 40 CFR Part 109 describing measures to prevent and contingency plans for potential spills and discharges from materials handling and transportation.

3. Field Sampling Plan

Settling Defendant shall develop a Field Sampling Plan (as described in “Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA,” October 1988). The Field Sampling Plan should supplement the QAPP and address all sample collection activities.

4. Construction Quality Assurance Project Plan

Settling Defendant shall submit a Construction Quality Assurance Project Plan (CQAPP) that describes the OU2-specific components of the quality assurance program, which shall ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The draft CQAPP shall be submitted with the preliminary design, and the final CQAPP shall be submitted with the final design. The CQAPP shall contain, at a minimum, the following elements:

1. Responsibilities and authorities of all organizations and key personnel involved in the design and construction of the RA;
2. Qualifications of the Quality Assurance Official to demonstrate he possesses the training and experience necessary to fulfill his identified responsibilities;
3. Protocols for sampling and testing used to monitor construction;
4. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation. A

description of the provisions for final storage of all records consistent with the requirements of the Consent Decree shall be included; and

5. Reporting requirements for CQA activities shall be described in detail in the CQAPP. This shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall be presented in the CQAPP.

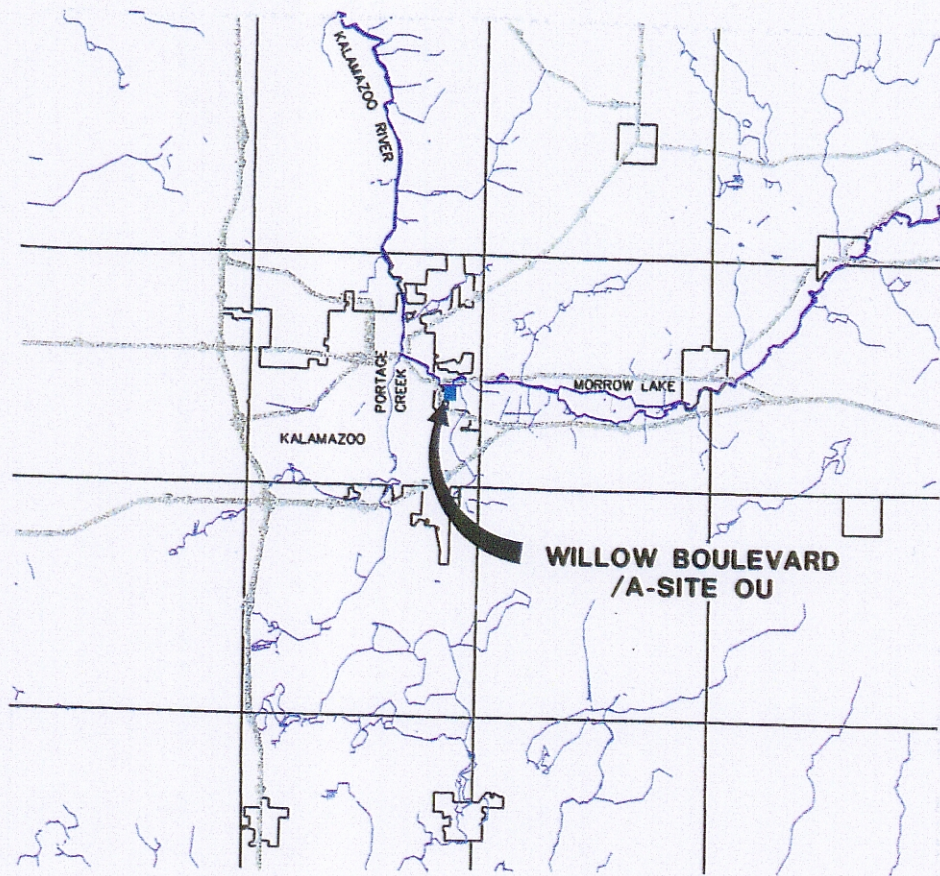
V. SUMMARY OF MAJOR DELIVERABLES/SCHEDULE

A summary of the project schedule and reporting requirements contained in this SOW is presented below:

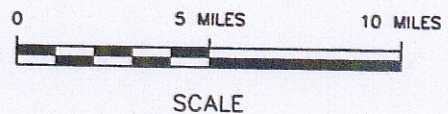
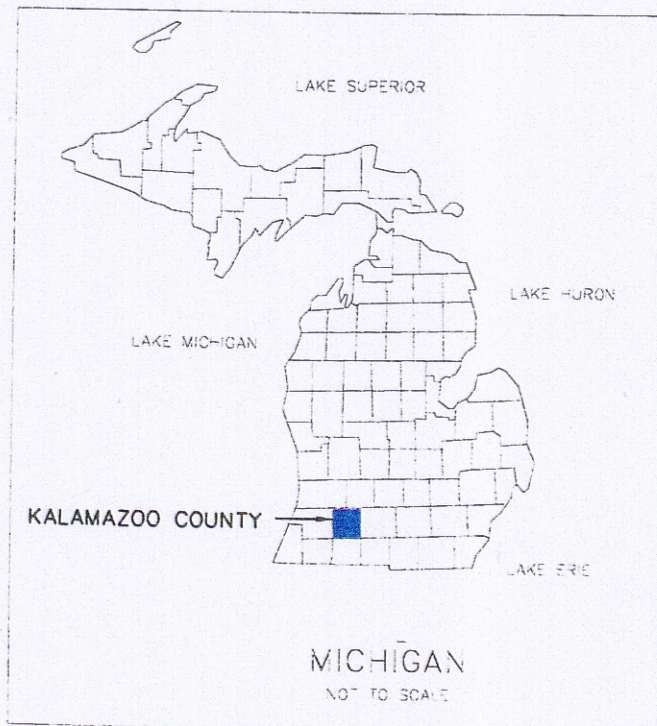
| <u>Deliverable/Milestone</u> | <u>Due Date (calendar days)</u> |
|------------------------------|---|
| 1. Design Work Plan | Thirty (30) days after Notice of Authorization to proceed with RD |
| 2. Progress Reports | As described in Section IX of the Consent Decree |
| 3. Preliminary Design (50%) | Ninety (90) days after Settling Defendant's receipt of all validated pre-design sample results, or a longer period of time as may be specified by U.S. EPA in writing |
| 4. Pre-Final Design (95%) | One hundred twenty (120) days after receipt of U.S. EPA's comments on the Preliminary Design, or a longer period of time as may be specified by U.S. EPA in writing |
| 5. Final Design (100%) | Sixty (60) days after receipt of U.S. EPA's comments on the Pre-Final Design, or a longer period of time as may be specified by U.S. EPA in writing |
| 6. RA Work Plan | Thirty (30) days after U.S. EPA's |

- | | | |
|-----|--|---|
| | | approval of the Final Design |
| 7. | Award RA Contract(s) | As defined in the U.S. EPA-approved RA Work Plan |
| 8. | Pre-Construction Inspection Meeting | As defined in the U.S. EPA-approved RA Work Plan |
| 9. | Pre-Construction Inspection | As defined in the U.S. EPA-approved RA Work Plan |
| 10. | Initiate Construction of RA | Fifteen (15) days after Pre-Construction Inspection |
| 11. | Pre-certification inspection of OU2 RA | Pursuant to Paragraph 52 of the Consent Decree and Section III, Task 4.B. of this SOW |
| 12. | Certification of Completion of the OU2 RA Report | Pursuant to Paragraph 52 of the Consent Decree and Section III, Task 4.D.2. of this SOW |
| 13. | Final O & M Plan | As defined in the RA Work Plan |
| 14. | Pre-certification inspection of OU-2 Work | Pursuant to Paragraph 53 of the Consent Decree and Section III, Task 4.C. of this SOW |
| 15. | Certification of Completion of Work Report | Pursuant to Paragraph 53 of the Consent Decree and Section III, Task 4.3. of this SOW |

Appendix D



KALAMAZOO COUNTY



NOTE:

KALAMAZOO COUNTY MAPPING OBTAINED FROM MICHIGAN RESOURCE INFORMATION SYSTEM.

KALAMAZOO RIVER STUDY GROUP
ALLIED PAPER, INC./PORTAGE CREEK/KALAMAZOO RIVER SUPERFUND SITE
REMEDIAL INVESTIGATION/FOCUSED FEASIBILITY STUDY
WILLOW BOULEVARD/A-SITE OU

Site Location Map

Figure 1

Appendix E

APPENDIX E

**DECLARATION OF RESTRICTIVE COVENANTS AND
ENVIRONMENTAL PROTECTION EASEMENT**

Allied Paper/Kalamazoo River

MDEQ Site ID No.:

U.S. EPA Site No.:

MDEQ Reference No.: [insert #]

This Declaration of Restrictive Covenants and Environmental Protection Easement (“Declaration”) is made by and between Georgia-Pacific LLC, a Georgia corporation (“Grantor”), having an address of 133 Peachtree Street, N.E., Atlanta, Georgia 30303; and the Michigan Department of Environmental Quality (“MDEQ”), having an address c/o Director, Michigan Department of Environmental Quality, P.O. Box 30473, Lansing, Michigan 48909-7973, shall be considered as the Grantee. (collectively referred to as “Parties”).

RECITALS

A. Grantor is the owner of the real property located in Kalamazoo County and legally described in Exhibit 1 attached hereto (“Property”).

B. The Property is part of operable unit 2 of the Allied Paper, Inc./Portage Creek/Kalamazoo River Superfund Site (“Site”), MDEQ, Site ID No. [###], for which a Record of Decision (“ROD”) has been issued by the United States Environmental Protection Agency (“U.S. EPA”) for the purpose of carrying out Response Activities, as defined below, needed to address environmental contamination at the Site. The MDEQ concurred with the ROD in a letter dated _____.

C. The United States Environmental Protection Agency has, pursuant to Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), entered into a Consent Decree (“CD”) with the Parties for the design and implementation of Response Activities at the Property. The CD, which bears Docket Number [], requires that Grantor place certain limitations on the use of the Property as therein described.

D. By this Declaration of Restrictive Covenants and Environmental Protection Easement, Grantee assumes no additional liability to the United States or the State of Michigan with regard to the Property.

E. The Site was placed on the National Priorities List (“NPL”) in 1990 and is a facility as that term is defined in Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”) and Section 20101(0) of Part 201, Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101(0) *et seq.* (“NREPA”). Hazardous substances, including polychlorinated biphenyls (“PCBs”) have been released and/or disposed of on the Property. The hazardous substances were contained in a landfill from the prior manufacturing activities associated with the Site. Prior to recording this Declaration, Response Activities have been undertaken to remove certain contaminated soils and waste debris.

[name]Superfund Site, [town], MI
Declaration of Restrictive Covenants
Page 2 of 10

F. At the time of recording of this Declaration, U.S. EPA has determined that the hazardous substances at the Property present a threat to human health through direct contact or ingestion, and that the land use and resource restrictions set forth below are required to prevent unacceptable exposures.

G. The restrictions contained in this covenant and easement are based upon information available to the U.S. EPA and MDEQ at the time the ROD was issued. Failure of the Response Activities to achieve and maintain the criteria, exposure controls, and requirements specified in the ROD; future changes in the environmental condition of the Property, the applicable cleanup criteria or the discovery of environmental conditions at the Property that were not accounted for in the ROD; or the use of the Property in a manner inconsistent with the restrictions described herein, may result in this Declaration not being protective of public health, safety, and welfare, and the environment. Information pertaining to the environmental conditions at the Property and Response Activities undertaken at the Site is on file with the MDEQ, Remediation and Redevelopment Division. Property Identification Number: [#####].

DEFINITIONS

"MDEQ" shall mean the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf;

"NREPA" shall mean Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

"Owner" shall mean, at any given time, the then current title holder of the Property or any portion thereof;

"Response Activities" shall mean, consistent with section 101(25) of CERCLA, such Activities as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in sections 101(23) and 101(24) of CERCLA, on the Property and/or at the Site, including enforcement activities related thereto;

"U.S. EPA" shall mean the United States Environmental Protection Agency, its successor entities and those persons or entities acting on its behalf.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201 of the NREPA; or the Part 201 Administrative Rules ("Part 201 Rules"), 1990 AACRS R 299.5105 *et seq.*, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the recording date of this instrument.

NOW THEREFORE, the parties agree as follows:

1. **Recitals.** The foregoing Recitals shall not be interpreted as mere recitals, but shall be

[name]Superfund Site, [town], MI
Declaration of Restrictive Covenants
Page 3 of 10

deemed part of this instrument and shall be enforceable hereunder.

2. **Purpose.** The purpose of this Declaration is to create restrictions in Grantor's real property rights, which will run with the land for as long as necessary to facilitate the remediation of environmental contamination described in the ROD as determined or modified by U.S. EPA; to grant a right of access to Grantee and its assigns and representatives to monitor and conduct Response Activities; to protect human health and the environment by reducing the risk of exposure to contaminants of concern; and to provide for the long-term protectiveness of the remediation.

3. **Grant.** Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree in the case of the United States of America v. Georgia-Pacific, LLC, , does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant, declare and convey to the Grantee, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property. Grantor, on behalf of itself, its successors and assigns, in consideration of the settlement terms set forth in the CD, warrants to the Grantee, and its assigns and representatives : 1) an environmental protection easement, the nature, character, and purposes for which are set forth herein; and 2) the right to enforce said easement.

4. **Third Party Beneficiary.** The Grantor, on behalf of itself and its successors, transferees, and assigns, hereby agrees that the United States, acting by and through the U.S. EPA its successors and assigns shall be a third party beneficiary ("Third Party Beneficiary") of all the benefits and rights set out in the restrictions, covenants, easements, exceptions, notifications, conditions and agreements herein, and that the Third Party Beneficiary shall have the right to enforce the restrictions described herein as if they were a party hereto. No other rights in third parties are intended by this Declaration, and no other person or entity shall have any rights or authorities hereunder to enforce these restrictions, terms, conditions or obligations beyond the parties hereto, their successors, assigns, subsequent owners of the Property and the Third Party Beneficiary.

5. **Restrictions on Use:** Owner, on behalf of itself, its successors and assigns or other persons acquiring an interest in the Property and their authorized agents, employees, or persons acting under their direction and control, covenants and declares that the Property shall be subject to the restrictions on use set forth below, and intends that said restrictions and covenants run with the land and may be enforced in perpetuity against any and all Owners by Grantee and the Third Party Beneficiary and its successors and assigns. Owner, its successors and assigns shall:

- a) Not use the Property in a manner that causes existing contamination to migrate beyond the boundaries of the Property, increases the cost of Response Activities, or otherwise exacerbates the existing soil and groundwater contamination located on the Property. The term exacerbation is more specifically defined in Section 20101(1)(n) of the NREPA.

[name]Superfund Site, [town], MI
Declaration of Restrictive Covenants
Page 4 of 10

- b) Prohibit and shall not use the Property in a manner that may interfere with Response Activities at the Property, including interim response, remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial action.
- c) Restrict the uses of the Property to those uses compatible with industrial, or other use that is consistent with the assumptions and basis for the cleanup criteria established pursuant to Section 20120a(1)(i) of the NREPA. Except as prohibited under paragraph 1(d) below, uses compatible with the commercial subcategories II through IV, described in Exhibit 3 (Allowable Uses), or recreational land use designations established under Part 201 are also allowable provided such uses are consistent with the restrictions and conditions set forth in this Restrictive Covenant and does not involve occupancy of the Property on an overnight basis. Cleanup criteria for specific categories of land use are located in the Government Documents section of the Library of Michigan.
- d) Restrict the uses of the Property such that the Property shall not be used for any of the following purposes:
 - i) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation;
 - ii) A hospital for humans;
 - iii) A public or private school;
 - iv) A day care center for children;
 - v) Any agricultural uses
 - vi) Any purpose involving occupancy on a 24-hour basis, residential or otherwise.
- e) Not construct or use wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other use, except for wells and devices that are necessary for Response Activities, testing and monitoring groundwater contamination levels in accordance with plans approved by the MDEQ or U.S. EPA. Short term dewatering for construction purposes is permitted provided the dewatering, including management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations including, but not limited to, Part 201 of the NREPA.
- f) Prohibit and shall not perform any construction of any buildings on the Property unless any such buildings are outside the area depicted in Exhibit 2 (otherwise known as the landfill area) and the building construction plans are submitted to and approved by the U.S. EPA.
- g) Allow the installation of permanent markers that have been approved by the U.S. EPA and the MDEQ within the Property boundaries. These permanent markers

[name]Superfund Site, [town], MI
 Declaration of Restrictive Covenants
 Page 5 of 10

shall more or less describe the restricted area and the nature of the prohibitions specified in the provisions of this Restrictive Covenant and the liber and page numbers of this Restrictive Covenant as recorded in the Kalamazoo County Register of Deeds Office. The Owner shall not remove, cover, obscure, or otherwise alter or interfere with any permanent markers placed on the Property at the locations generally depicted in Exhibit 2. Owner shall keep vegetation and other materials clear of any permanent markers to assure that the markers are readily visible.

6. **Access:** . Grantor grants to the Grantee, and its representatives and assigns an irrevocable and continuing right of access at all reasonable times to the Property for the purposes of:
- a) monitoring, overseeing and/or implementing the Response Activities described in the ROD or any other U.S. EPA or MDEQ decision document for the Property or the Site, and conducting any necessary inspection and repair of any operation and maintenance equipment;
 - b) verifying any data or information submitted to the U.S. EPA and/or the MDEQ, and determining and monitoring compliance with the ROD, any other U.S. EPA or MDEQ decision document, and any implementing statement of work or work plan;
 - c) verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) conducting and/or monitoring investigations relating to the nature and extent of contamination on or near the Property and the Site including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
 - e) conducting periodic reviews of the Response Activities at the Property and at the Site, including but not limited to, reviews required by applicable statutes and/or regulations; and
 - f) implementing additional or new Response Activities, if the remedial action selected in the ROD or any other U.S. EPA and/or MDEQ decision document results in any hazardous substances, pollutant or contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure, and U.S. EPA, in consultation with MDEQ and pursuant to Section 121(c) of CERCLA, determines that, upon its completion, the selected remedy for the Site will not be protective of public health, welfare or the environment; or
 - g) implementing additional or new response activities, as that term is defined in Section 20101(1)(ee) of the NREPA, if the remedial action selected in the ROD or any other MDEQ and/or U.S. EPA decision document results in any hazardous substances, pollutants or contaminants remaining at the Site above the criteria developed pursuant to

[name]Superfund Site, [town], MI
 Declaration of Restrictive Covenants
 Page 6 of 10

Section 20120(a)(1)(i) of the NREPA, and MDEQ, in consultation with U.S. EPA, determines that , upon its completion, the remedy will not be protective of the public health, safety, welfare or the environment.

7. **MDEQ Entry, Access, and Response Authority:** Nothing in this instrument shall limit or otherwise affect MDEQ's right of entry and access, or authorities to take Response Activities as defined in this instrument, as well as in Section 20101(1)(ee) Part 201 of the NREPA, under CERCLA, the National Contingency Plan, 40 C.F.R. Part 300, the NREPA, and any successor statutory provisions, or other state or federal law.
8. **U.S. EPA Entry, Access, and Response Authority:** Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or authorities to take Response Activities as defined in this instrument, as well as in CERCLA, the National Contingency Plan, 40 C.F.R. Part 300, and any successor statutory provisions, or other state or federal law.
9. **Term:** This Restrictive Covenant and Environmental Protection Easement shall run with the Property until terminated or revoked pursuant to paragraph 10, below, and shall be binding on the Owner; future owners; and all current and future successors, lessees, easement holders, their assigns, and their authorized agents, employees, or persons acting under their direction and control.
10. **Modification:** The Restrictive Covenant and Environmental Protection Easement contained herein shall continue for so long as necessary to accomplish the Response Activities described in the CD, and shall not be modified, suspended, terminated or revoked without express written authorization by U.S. EPA. U.S. EPA, and Grantee as necessary, may modify or terminate, in whole or in part, the foregoing restrictions or any portion thereof in writing, as authorized by law. The Grantor or any subsequent owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth herein by submitting to U.S. EPA a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and sets out any proposed revisions to the environmental easement/restrictive covenants in this Declaration. Each application for termination or modification of any restriction or easement set forth herein shall include a demonstration by the applicant that the requested termination or modification will not interfere with, impair or reduce:
 - a) the effectiveness of any measures undertaken pursuant to the CD;
 - b) the long term protectiveness of the remediation; or
 - c) protection of human health and the environment.

If U.S. EPA makes a determination that an application satisfies the requirements of this paragraph, including the criteria specified in (a) through (c), U.S. EPA will notify the owner of the Property in writing. If U.S. EP A does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied Owner's application. Any modification to or rescission of this Restrictive

[name]Superfund Site, [town], MI
 Declaration of Restrictive Covenants
 Page 7 of 10

Covenant and Environmental Protection Easement shall be filed with the appropriate Registrar of Deeds by the then Owner and a certified copy shall be returned to MDEQ and U.S. EPA at the addresses listed below.

11. **Enforcement:** The Grantor, Grantee or Third Party Beneficiary, each acting independently and without the others, shall be entitled to enforce the terms of this instrument in a judicial action seeking specific performance or other applicable remedies at law or in equity. The right to so enforce the conditions and restrictions in this instrument are in addition to any other remedies that may be available, including, but not limited to, remedies under CERCLA. Whether to enforce the terms of this instrument or to participate in an enforcement action brought by any of the others shall be at the sole discretion of the Grantor, Grantee and/or the Third Party Beneficiary and any forbearance, delay or omission to exercise any of their rights under this instrument in the event of a breach of any term of this Declaration shall not be deemed a waiver by any such party of any such term, or any other term, or any rights of any of the Grantor, Grantee or Third Party Beneficiary under this instrument. These covenants shall not inure to the benefit of the public in general.
12. **Transfer of Interest:** The Owner shall provide notice to the MDEQ and to U.S. EPA of the Owner's intent to transfer any interest in the Property, or any portion thereof, at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without complete provision for compliance with the terms and conditions of this Restrictive Covenant and Environmental Protection Easement and the applicable provisions of Section 20116 of the NREPA, as determined by U.S. EPA and MDEQ. The Owner shall include in any instrument conveying any interest in any portion of the Property, including but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT AND ENVIRONMENTAL PROTECTION EASEMENT , DATED _____, 2009, AND RECORDED WITH THE _____ COUNTY REGISTER OF DEEDS, LIBER _____, PAGE _____. THESE RIGHTS AND RESTRICTIONS RUN WITH THE LAND AND ARE ENFORCEABLE BY THE GRANTOR, GRANTEE AND THE THIRD PARTY BENEFICIARY IDENTIFIED THEREIN.

13. **Reservation of Defenses:** Nothing in this instrument shall be construed to enlarge the jurisdiction of federal courts, to create subject matter jurisdiction to adjudicate any claims against U.S. EPA, or otherwise to operate as a waiver of any sovereign immunity of the United States, and the United States expressly reserves all rights and defenses it may have in connection with any action initiated pursuant to this instrument. Nothing herein shall be construed as Grantor's waiver of any rights or defenses available at law, in equity, provided by any statute or by any state and federal constitution.

[name]Superfund Site, [town], MI
Declaration of Restrictive Covenants
Page 8 of 10

14. **Notices:** Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Declaration shall be made in writing and include a statement that the notice is being made pursuant to the requirements of this Declaration and shall be served either personally or sent via first class mail, postage prepaid, as follows:

For the U.S. EPA:

Director
Superfund Division (SR-6J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

with a copy to:
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

For the MDEQ:

Director
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, MI 48909-7973

15. **Miscellaneous.**

- a. **Controlling Law:** The interpretation and performance of this Declaration shall be governed by the laws of the United States as to the obligations referred to in the CD, and to the laws and regulations of the State of Michigan for all other purposes hereunder (without reference to choice of laws principles thereof). The right to enforce the conditions and restrictions in this instrument are in addition to other rights and remedies that may be available, including, but not limited to, administrative and judicial remedies under CERCLA.
- b. **Liberal Construction:** Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to affect the purpose of this instrument and the policy and purpose of CERCLA and the land use restrictions and prospective use limitations of the State of Michigan. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

[name]Superfund Site, [town], MI
Declaration of Restrictive Covenants
Page 9 of 10

- c. **Severability:** If any provision of this instrument is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof, and all other provisions shall continue unimpaired and in full force and effect.
 - d. **Entire Agreement:** This instrument supersedes all prior discussions, negotiations, understandings, or agreements relating to the matters addressed herein, all of which are merged herein.
 - e. **Successors:** The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of Grantor and Grantee and their agents, successors, and assign and any subsequent owners, occupants or other persons acquiring an interest in the Property and their respective agents, successors and assigns. The rights, but not the obligations or authorities, of the U.S. EPA are freely assignable to any public entity, subject to the notice to the Grantor, its successors and assigns, as their interests appear in the public title records kept and maintained by the Kalamazoo County Registrar of Deeds.
15. **Exhibits:**
- Exhibit 1 – Legal description of the Property.
- Exhibit 2 – Survey of the Property generally depicting the landfill relative to the Property boundaries, and the location of the permanent markers.
- Exhibit 3 –Allowable Uses
16. **Authority to Execute Restrictive Covenant and Environmental Protection Easement:**
The undersigned person executing this instrument on behalf of the Owner represents and certifies that he or she is duly authorized and has been empowered to execute and deliver this Restrictive Covenant and Environmental Protection Easement.

IN WITNESS WHEREOF, the County Registrar of Deeds has caused this Restrictive Covenant to be executed on
this _____ day of _____, 2009.

[name]Superfund Site, [town], MI
Declaration of Restrictive Covenants
Page 10 of 10

FOR Georgia-Pacific, LLC

Signature:_____Date

Name (print):_____

Title:_____

Address:_____

FOR the State of Michigan

Signature:_____Date

Name (print):_____

Title:_____

Address:_____

Appendix F

[Letterhead of Bond Issuer]

PAYMENT BOND

Surety's Payment Bond Number: _____
Date of Execution of Payment Bond: _____
Effective Date of Payment Bond: _____
Total Dollar Amount of Payment Bond: _____

Principal:

Legal Name and Address: [name and business address of PRP/Settling Defendant(s)]
Type of Organization: [insert "individual," "partnership," "limited liability
company," "corporation," etc.]
State of Organization:

Surety:

Legal Name and Address: [name and business address of surety providing the bond]
Type of Organization: [insert "individual," "partnership," "limited liability
company," "corporation," etc.]
State of Organization:

Beneficiary:

Legal Name and Address: EPA Regional Administrator or Regional Superfund
Director for EPA Region [____] (or any of their designees)
[insert address]

Site Information:

Name and Location of Site:
EPA Identification Number: [Site or CERCLIS ID Number, if applicable]
Agreement Governing Site Work: [That certain [Consent Decree] [Administrative
Order on Consent] dated _____, 20xx, by
and among the United States of America,
_____, and _____ (the
"Agreement")]

KNOW ALL PERSONS BY THESE PRESENTS, THAT:

WHEREAS, said Principal is required, under the above-described Agreement entered pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), to perform the "Work" as defined in such Agreement (hereinafter, the "Work") and to fulfill its other obligations as set forth therein; and

WHEREAS, said Principal is required by the Agreement to provide financial assurance securing its full and final completion of the Work.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the United States Environmental Protection Agency (hereinafter, "EPA"), in the above Total Dollar Amount, for the payment of which we, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof. **[Add proviso if there are multiple sureties: ";provided that, where the Sureties are acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the Total Dollar Amount."]**

2. The conditions of the Surety's obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally complete the Work in accordance with the terms of the Agreement, the Surety's obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.

3. The Surety shall become liable on the obligation evidenced hereby only upon the commencement of any Work Takeover (as such term is defined in the Agreement) pursuant to and in accordance with the terms of the Agreement. At any time and from time to time upon notification by the EPA Regional Administrator or Regional Superfund Director for EPA Region [] (or any of their designees) that a Work Takeover has commenced, the Surety shall promptly (and in any event within fifteen (15) days after receiving such notification) pay funds up to the Total Dollar Amount in such amounts and to such person(s), account(s), or otherwise as the EPA Regional Administrator or Regional Superfund Direction (or their designee) may direct. If the Surety does not render such payment within the specified 15-day period, the Surety shall be deemed to be in default of this Payment Bond and EPA shall be entitled to enforce any remedy available to it at law, in equity, or otherwise.

4. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the Total Dollar Amount of this Payment Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.

5. The Surety may cancel this Payment Bond only by sending notice of cancellation to the Principal and to the EPA Regional Administrator for EPA Region [___], provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator. If after ninety (90) days of such 120-day period, the Principal has not established a replacement financial assurance mechanism pursuant to and in accordance with the terms of the Agreement, EPA shall have the right to draw upon the full amount of this Payment Bond.

6. The Principal may terminate this Payment Bond only by sending written notice of termination to the Surety and to the EPA Regional Administrator for EPA Region [___], provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Payment Bond by the EPA Regional Administrator (or his or her designee).

7. Any modification, revision, or amendment which may be made in the terms of the Agreement or in the Work to be done thereunder, or any extension of the Agreement, or other forbearance on the part of either the Principal or EPA to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors or assigns from liability hereunder. The Surety hereby expressly waives notice of any change, revision, or amendment to the Agreement or to any related obligations between the Principal and EPA.

8. The Surety shall immediately notify EPA of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing. The Surety shall also immediately notify EPA if, at any time, the Surety ceases to be listed as an acceptable surety for Federal bonds in Circular 570 of the U.S. Department of the Treasury.

9. Any provision in this Payment Bond that conflicts with CERCLA or any other applicable statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein.

10. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the address shown on this first page of this Payment Bond.

All notices, elections, requests and demands under this Payment Bond shall be effective and deemed received upon the earliest of (a) the actual receipt of the same by personal delivery or otherwise, (b) one (1) business day after being deposited with a nationally recognized overnight courier service as required above, or (c) three (3) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

11. The Surety hereby agrees that the obligations of the Surety under this Payment Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Payment Bond to or for the use of any person other than EPA or the executors, administrators, successors or assigns of EPA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Principal and Surety have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Payment Bond on behalf of the Principal and Surety, respectively.

PRINCIPAL:

[_____] ,
a [corporation/partnership/limited liability
company] organized and in good standing in
the State of [_____]

Attest: _____
Name: _____

By: _____
Name: _____
Title: _____

SURETY:

[_____] ,
a [corporation/partnership/limited liability
company] organized and in good standing in
the State of [_____]

Attest: _____
Name: _____

By: _____
Name: _____
Title: _____

CORPORATE ACKNOWLEDGMENTS

STATE OF _____)
SS:
COUNTY OF _____)

On _____, 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF _____)
SS:
COUNTY OF _____)

On _____, 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public